HEARINGS

BEFORE THE COMMITTEE ON MILITIA U.S. HOUSE OF REPRESENTATIVES

ON

H. R. 14783

[Jan. 27, 1908]

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

[House Resolution No. 203, Sixtieth Congress, first session.]

Mr. Steenerson submitted the following resolution:

"*Resolved*, That the Committee on Militia may have such printing and binding done as may be necessary in the transaction of its business."

COMMITTEE ON MILITIA,
HOUSE OF REPRESENTATIVES,
January 27, 1908.

The Committee on Militia met at 10.25 a. m. for the consideration of House bill 14783, Hon. Halvor Steenerson (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, this meeting is called specially to consider House bill 14783. This is the bill, as I understand, that was prepared by the committee of the National Guard Association, and has been approved by them and introduced at their request, in the Senate by Senator Dick, and by myself in the House, and General Drain, who is representing these various National Guard associations, is here to explain it and advocate it.

Mr. WILEY. I move that we hear General Drain.

The CHAIRMAN. It is moved that we hear General Drain upon this bill. Unless there is objection the motion will be taken as granted.

STATEMENT OF GEN. JAMES A. DRAIN.

General DRAIN. Mr. Chairman and gentlemen of the committee: I am the chairman of the executive committee of the National Guard Association of the United States, which now embraces all of the States and Territories of the Union.

This measure can perhaps be more particularly described and quickly disposed of by my reading to you the report which I made to the late convention of the National Guard Association, held in Boston. I will say to you, gentlemen, that there were in that convention 38 States represented. None of the large States were not represented. The man from Mississippi was sitting alongside of the man from Maine, and the man from Florida by the man from Washington, and by the man from California was the man from Massachusetts. North and South, East and West, were represented.

"That portion of a report of James A. Drain, chairman of the executive committee of the National Guard Association of the United States, relating to Federal legislation affecting the Organized Militia, read to that body January 18, 1908, in Boston, at its tenth annual convention:

"'MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: Your executive committee met pursuant to the call of the chairman thereof, in Washington, D. C., December 12, 1907. After a general discussion of the whole subject of Federal legislation for the National Guard the committee agreed upon a plan of action as follows, namely:

"'First. To formulate definite propositions, dividing the whole subject into as many propositions as seem desirable.

"'Second. To present these propositions to the Acting Secretary of War, Chief of Staff, Judge-Advocate-General, and such members of the General Staff as the Acting Secretary of War might call in, that the whole subject might be again gone over from every standpoint.

"'Third. To take the propositions as they stood, after the two conferences, and put them in the form of amendments to existing law, or, if necessary, new law.

"'Fourth. To submit the proposed amendments or new law to the members of the committee and the War Department officials for agreement.

"'This programme was carried out. The committee commenced its labors on the morning of Thursday, December 12, and some of the subcommittees were engaged in consideration of the questions involved until 1.30 o'clock that night. On the next day, after an early meeting of the committee, the members repaired to the War Department, where through the courtesy of Gen. Robert Shaw Oliver, Acting Secretary of War, and in order to secure harmonious action between the War Department and the association, the executive committee met in joint conference with the Acting Secretary of War and a number of members of the General Staff detailed for that purpose at the War Department building, where a free and full discussion lasting all day was had of all subjects of proposed legislation.

"'The following officers participated in the deliberations of the conference, or of the executive committee, at one or more of their sessions:

"'Gen. Robert Shaw Oliver, Acting Secretary of War.

"'Gen. Charles Dick, U. S. Senator, president of the association.

"'Maj. Gen. J. Franklin Bell, U. S. Army, Chief of Staff.

"'Brig. Gen. George B. Davis, U. S. Army, Judge-Advocate-General.

"'Gen. James A. Drain, chairman executive committee.

"'Gen. Lawrason Riggs, Maryland, member executive committee.

"'Gen. J. P. S. Gobin, Pennsylvania, member executive committee.

"'Gen. Francis A. Macon, North Carolina, member executive committee.

"'Gen. T. J. Stewart, adjutant-general of Pennsylvania.

"'Gen. James P. Parker, Massachusetts, member executive committee.

"'Col. Butler Ames, M. C., of the Committee on Militia.

"'Maj. F. J. Kernan, U. S. Army, General Staff.

"'Maj. George C. Lambert, Minnesota, secretary executive committee.

"'Capt. J. P. Tracy, U. S. Army, General Staff.

"'Capt. W. M. Wright, U. S. Army, General Staff.

"'Capt. Henry L. Whipple, Illinois National Guard.

"'On Saturday, the 14th, the time of the committee was taken up in drafting amendments to existing law, to cover the propositions agreed upon. On Sunday, the 15th, these amendments were submitted to the Acting Secretary of War, the Judge-Advocate-General, and Major Kernan, of the General Staff, and approved by them.

"'Now, the United States has never had a military policy until war came. Even in war tremendous avoidable losses in men and money have been suffered before a suitable policy was smelted out by the fierce battle heat. Why is this? What is the reason we have lived for one hundred and thirty years in a state of unpreparedness, but confident of our ability to dispose of every enemy who might come against us?

"'The answer, to a student of American affairs, is perfectly plain and obvious. Our people believe that a republic should be able to depend upon its citizens, they forming an integral part of the

government, to come forward in time of peril to the nation as its defenders.

" 'On the whole, the narrative of our wars has proved this to be a just faith. The bounty and the draft have been employed, but we probably can not by any course entirely escape from the necessity of the draft in a long war.'

"I may interpolate here that I read this to you not particularly to advise you, because you are probably well advised, but to give you the viewpoint of the gentlemen who agreed upon these amendments.

"Lack of education in military affairs begets want of interest. Our people in time of peace know little and care less about military things. In time of war with the most of courage and the least of knowledge they throw themselves gallantly into the breach, to serve as best they may. They are good soldiers when trained. So far they have had most of their training during war. At the close of war they go back to peace pursuits and fall heir to a conviction that it is impossible for war to come again.

" 'These are the real reasons for lack of progress in this direction. That there has been no progress does not constitute a sufficient reason why there should be no progress.

" 'In the beginning our forefathers were opposed to a large standing army; so are we. They believed in the militia as a national military force; so do we, but in a different way, and in another kind of militia. Their fear of a large standing army was honestly come by. It was bred by their experiences in the lands from which they came. They dreaded a military dictatorship, and their apprehensions were not without cause, under the circumstances. In a new country, without settled, fixed, and determined limits to its powers, purposes, or plans, such an event was not impossible or even improbable.

" 'Every citizen in the days of '76 owned a weapon and was more or less trained in its use, a condition which continued for many years thereafter. What was more simple, natural, and logical than to provide, first, that citizens should always have arms in their possession, and then offer a plan under which they could be enrolled and ordered forth?

" 'We are not so sure that this was not the best system which could have been employed in those days. Certainly, considering the temper of our people then, no other course was possible. General Emory Upton in his excellent work, Military Policy of the United States, with the professional soldier's customary ignorance of political conditions, does a rank injustice to the statesmen of early days.

" 'The chief end of a nation is not to fight, but to avoid fighting, when that can be done honorably. The interests of the United States were not widely dispersed in those days. This country was not a world power as now. It is not fair to judge historical events by a standard established in subsequent years. Judgment must be based upon truth, with due consideration of the context as represented by the physical and psychological conditions of the time. The adoption of a military policy sound and correct from the military standpoint alone might have meant—indeed, it is more than probable that it would have meant—the destruction of the country. However, we are not so much concerned with the past as with the present and the future. Suffice it to say that the country has come through its many

wars without losing any territory, although with an occasional gain in that direction.

"'Our wars would appear to have been at too great a direct cost, but the thoughtful student can discover many compensations. Times have greatly changed, and there is now a necessity for providing new remedies for new diseases. Wars to-day are more apt to last seven months than seven years, and the need of preparation for quick action in a crisis is imperative. Even so, there is no call for the United States to maintain a large standing army. She could well have a much larger number of trained officers than are now available, but her chief reliance must still be upon the militia. Not the militia of old days, not the minute man, who was part of no fixed and permanent organization; not the Organized Militia of to-day, strong and efficient as it is in certain localities and organizations, but dependence must be placed upon an organized force, a national guard in fact as well as name, which as it stands is immediately available at the order of the President upon the outbreak of war, completely armed, uniformed, and equipped, properly trained, and 100 per cent efficient.

"'Under the old system, there being an entire lack of support by the Federal Government, there grew up a series of State armies, a force which had no fixed status. Increased national and State appropriations added immensely to the efficiency of the Organized Militia, but a spadeful of earth has only been turned where the whole field must be plowed.

"'Under our form of government, as crystallized into a concrete code of principles by the Constitution of the United States, there are due to the Federal Government certain obligations from the States and definite debts by the Union to the States. This we all agree upon now as a principle fundamentally correct. These declarations of the Constitution of the United States are sacred and must not and shall not be disturbed. The States are sovereign up to a more or less clearly determined point, and that sovereignty must not be impaired. A State may not wage war; only the nation can do that. But power to create a force to provide proper police protection and to be a national reserve through the authority of Congress is lodged by the Constitution in the hands of the States. The plan of government contemplated by the Constitution is a beautiful one, but it involves broad-minded public spirit upon the side of each party at interest to carry it out.

"'The manifest meaning of the Constitution is that an organized force of militia is to exist, which, so far as any constitutional inhibition is concerned, might be entirely supported by the United States.

"'The National Guard has always claimed the right to fall in immediately behind the Regular Army at the first call for troops in time of war. During the Spanish war the existing militia was largely drawn on for material to organize a volunteer force; but it was necessary first to reenlist and recommission them and subject them all to the medical examination required of new recruits. The Dick law, repealing the obsolete statute of 1792, defines the status of the Organized Militia as a Federal force, provides for uniformity and conformity in organization, armament, and discipline with the Regular Army, but limits their employment by the President to a period of nine months, while it has been generally understood that

they could not be used outside the limits of the United States. The requirements as to formal muster in and medical examination still remain.

"'It is easily perceived that with these limitations the United States could not use the National Guard in an emergency, except as a temporary force to be put in the field while volunteers were being raised to take their place—a prospect which falls far short of the aims of the national guardsman. It is this situation and its proposed remedies which received most earnest consideration at the Washington conference. A practical solution of the questions was made possible by an opinion of Gen. George B. Davis, Judge-Advocate-General of the Army.

"'It was held by General Davis, in accordance with the views expressed by Madison, that a declaration of war was a law of the Union, and that Congress, under its constitutional power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," could lawfully provide for the use of the militia even outside the limits of the United States. Acting on this theory, it was proposed and agreed at the conference to remove the nine months' limitation of the present law and substitute for it the remaining term of commission or enlistment under which the officer or the enlisted man was serving in a State force and to dispense with any further enlistment of additional medical examination except for those States and Territories which had not adopted the standard of medical examination prescribed for the Regular Army. It also provides that the Organized Militia shall be called into the service of the United States in advance of any volunteer force which it may determine to raise. Commissions, warrants, membership in such organizations would mean something. The organizations would be sure of going just as they stood, without changing their designations, with integrity and identity unimpaired. Necessarily there should be, as a proper State supplement to this plan, State action which would give a reserve or depot battalion for each regiment taken, which reserve battalion would recruit and train men from the same locality, to be sent to the regiment when needed. These provisions are embodied in the proposed amendments to sections 4, 5, 7, and 11 of the Dick law.

"'The Federal Government having thus secured for war purposes an organized force, constantly in training, which, when expanded to a war footing, will provide an addition to the Regular Army of about 200,000 men, it became evident that a corresponding duty devolved upon the Government to arm, uniform, and equip this force for all emergencies. Provision was therefore made, by amendment to section 13 of the Dick law, for issue to the Organized Militia of the several States and Territories of such number of the United States service arms, together with all accessories and such other accouterments, equipments, uniforms, equipage, and military stores of all kinds required for the Army of the United States as are necessary to arm, uniform, and equip all of the Organized Militia * * * without charging the cost or value thereof or any expense connected therewith against the allotment of said State or Territory. The Secretary of War is also authorized to fix an annual clothing allowance to each State and Territory and to issue small arms and field artillery ammunition, upon the requisition of the governor, in the proportion

of 50 per cent of the corresponding Regular Army allowance, without charge to the State.

"'The privilege of attending military schools and colleges of the United States which, under the Dick law, was granted to officers of the National Guard has been extended by a proposed amendment to section 16 to the enlisted men, which provides for the allowance of transportation, quarters, and subsistence.'

"I may say, gentlemen, the particular purpose of amending here was to allow the cooks of the National Guard to attend the army cooking schools. We find it fundamentally necessary to have good cooks, and it is considered that upon authority being given for the attendance of our National Guard cooks at the service cooking schools, a great many of the men would take advantage of it, and thus provide us with trained cooks.

"Section 20 was also amended so as to authorize the detail of enlisted men as well as officers of the Regular Army for duty in connection with the Organized Militia.

"While the Secretary of War, in the administration of the affairs of the Army, is assisted by an advisory board, or General Staff, composed of forty-two officers from all arms of the service, it was recognized that the dual status of the militiaman as a citizen and a soldier required the application of rules and methods under which he is compelled to live. These conditions are best appreciated and understood by officers of the militia, who are operating under them, and their recommendations, based upon practical experience, may be of assistance to the Secretary of War in determining questions affecting the militia. An amendment was therefore proposed to section 20 of the Dick law providing for the appointment by the Secretary of War of a board of five officers of the Organized Militia to serve without pay unless summoned by the Secretary of War 'for consultation respecting the conditions, status, and needs of the whole body of the Organized Militia.'

"An opinion of the Attorney-General of the United States to the effect that the Organized Militia, contrary to the intention of the framers of the law, led to the adoption of a proposed amendment to section 1 of the Dick law limiting the application of its provisions to 'the militia organized as a land force.'

"I may say here, gentlemen, that there is a measure now before Congress organizing a naval militia.

"'For the better administration of justice, and in view of the proposed closer relations between the National Guard and the Regular Army, it was deemed advisable to permit a minority of Regular Army officers to sit on court-martial for the trial of officers or enlisted men of the militia when in the service of the United States. This provided by an amendment to section 8 of the Dick law.

"'Section 15 of the Dick law, providing for participation by the Organized Militia in army maneuvers, is silent as to the command of the troops thus jointly engaged. By a proposed amendment to that section it is provided, in effect, that command shall devolve upon the senior officer.

"'The amendments to the Dick law seek to make the National Guard actually part of the first line of defense with the Regular Army, rendering it subject to duties whenever and wherever the President of the United States may require it, in the event of war.

They seek, further, to place the entire cost, as well as the responsibility of arming, uniforming, and equipping, the National Guard upon the United States, thus allowing the States to use their appropriations for the construction of armories and administrative and local expenses.

"'While the action taken at the Washington conference is all important and most far-reaching in its effects upon the future of the National Guard, it is only the logical development of the policy inaugurated by the enactment of the Dick law, the increased efficiency of the Organized Militia and its availability for instant use as a material addition to the regular forces in time of war. These results must necessarily inure to the benefit of the States, for they retain absolute control of the National Guard in time of peace.'

"That is a point which should be particularly noted. There is nothing in the proposed amendments to the existing law which in any way limits the power of a State to control its forces in time of peace. So far as the extension of the powers of the President is concerned in time of war, there is no real extension of the powers, but there is a change in the duration of the time for which these men shall be ordered out and taken. Under the existing law, as you know, the limit is set at nine months. Under the proposed change it will be for the term of the existing commissions and enlistments of the officers and men. In other words, the amendment proposes in the contract originally entered into between the men and the State through their enlistment to substitute the United States for the State, then at the end of war the men go back to their States with precisely the status they occupied before the war began.

"Mr. DENBY. Except they would have, I suppose, all the benefits and privileges that accrue to the discharged soldier of the United States.

"General DRAIN. Precisely.

"Mr. PARKER. Are not they mustered into the United States service in case of war?

"General DRAIN. A provision that I shall refer to later, with your permission, will cover that subject.

"'The committee also prepared a joint resolution extending the time in which the Organized Militia should conform to the organization of the Regular Army and Volunteer Army, under the provisions of the act of January 21, 1903, which resolution was introduced in the House by Colonel Ames. It was passed by the House on January 10 of this year. This was thought necessary, in view of the fact that immediate action was required to avoid embarrassment and injury to the National Guard organizations in many States. There is a provision in the proposed amendments to section 3 of the law which covers the same points, and provides for inspectors of rifle practice in peace and war, and further provides for such general exceptions in peace as may be authorized by the Secretary of War, and limits conformation to that of the Regular Army only.

"'Your committee has no power to initiate legislation. It can only forward such legislation as the convention presents to it for that purpose, but that the convention might have something definite to work upon the committee considered it necessary to take the action it has taken in relation to drafting these amendments. If they should meet with your approval, then the committee is prepared to go ahead and do all

that can be done to secure their passage. They have not been introduced to the Congress, and will not be unless the convention approves. The committee was of the opinion that if these amendments could be agreed upon by the convention and then be enacted into law, such a tremendous stride forward in the evolution of a National Guard would have been taken as to insure within a reasonable time the development of that body into a military organization of the highest efficiency, a result of incalculable value to the nation.

"'I have the honor to submit herewith for the consideration of the convention the amendments to the existing law, which would appear to be required to effect the general purpose.

"'I shall, at the conclusion of this report, offer a motion, which I have heretofore, as chairman of the executive committee, offered at former conventions, namely: That a legislative committee, consisting of one member from each State, such members to be designated by the chairman of the State delegation, be created, to consider all questions of legislation, to which these proposed amendments shall be referred.

"'Respectfully submitted.

"'JAMES A. DRAIN,
"'*Chairman Executive Committee.*'

"The motion of the chairman of the executive committee was put and carried. In accordance with its provisions a legislative committee, consisting of one officer from each State represented in the convention, was appointed. Of this committee, James A. Drain, chairman of the executive committee, was elected chairman.

"The legislative committee considered each of the proposed amendments separately and approved them all unanimously.

"The report of this committee to the full convention was received; each amendment was voted on separately and approved, and the amendments as a whole received the unanimous approval of the convention.

"The convention instructed the executive committee to have the amendments presented to the Congress and to forward their favorable consideration there. The amendments as thus adopted and unanimously approved by the convention accompany this report.

"The convention also instructed the executive committee to urge upon the Congress the favolable consideration of that body for that measure heretofore presented to them which provides for an increase in the number of officers of the United States Army, with particular reference to the desire expressed by the convention to have at least one officer of the Army detailed for duty with the organized militia of each State, Territory, and the District of Columbia."

General DRAIN. Now, Mr. Chairman, how do you desire to limit me as to time; to what length do you desire to hear from me?

The CHAIRMAN. I do not think we will limit you. Take what time you want.

General DRAIN. Taking up the present bill as it stands, I find that the new matter has not been italicized in this bill, although it was underlined in the bill as introduced. Therefore, it would be difficult for a member of the committee, unless the bill had been gone over and the new matter marked, to identify it. If the committee so desire I can take the copy of the bill which I have marked, and refer,

section by section, to the new matter and explain what each amendment was intended to accomplish.

The CHAIRMAN. You may do so.

General DRAIN. Taking the bill, which, as you know, was introduced at the same time in the Senate and bears there No. 4316 (H. R. 14783), on the first page of the bill there are no changes. The title of course is written to cover the text of the bill.

On page 2 of the bill, in line 3, commencing at the word "Provided," all the matter in that connection down to the end of line 6 is new matter.

The purpose of this amendment was to exclude specifically from the operation of this law the Naval Militia, which is taken care of in another manner and by other Federal legislation.

On the same page in section 3, eighteenth line, the words "On and after January twenty-first, nineteen hundred and ten," are new matter.

In line 22, same page, the words "Regular Army" should be underlined. It was formerly "Regular and Volunteer armies." We struck out the "Volunteer armies," it being impracticable to conform to two forces which of themselves were different.

On line 23, commencing with "subject in time of peace to such general exceptions as may be authorized by the Secretary of War," is new matter, and all of line 25, and on page 3 following, all of the matter down to the word "*Provided,*" in the ninth line, is new matter. It is wholly impossible to make this identification of new matter wholly accurate, but this makes it so that you can identify it sufficiently for the purpose we have in view. The purpose of this change is to allow, in time of peace, such deviation from strict conformity as appears necessary to the Secretary of War. We found in working out the problem in the various States that we encountered a sitiuation possibly like this: The State is making a new regiment; it gets ten companies and wants a regimental commander and regimental staff, as these would help to get the additional companies. Under a strict interpretation of the present law, that of course could not be done. The purpose of the amendment is to allow a temporary and slight deviation. There are other points of the same character which are covered by it. You will understand a deviation is only allowed in time of peace, and then only such deviation from strict conformity as is approved by the Secretary of War. Provision is made in this amendment for inspectors of small-arms practice, in peace and war, a lieutenant-colonel for a division, a major for a brigade, a captain for each regiment, etc. These inspectors of rifle practice in the States are extremely valuable, and we have experienced great difficulty in many of the States in securing the best men for that use or purpose, because they do not want to leave their regiments. They want to go out with the regiment in case of war. We often find that the captain of a good company, who may be has the best man for instructor in rifle practice in the regiment. In that case his colonel would want to use him as inspector of small-arms practice, but the captain is reluctant to take the detail because of the fact that in war he would be left at home. We provide a fixed, permanent place in the regiment for him in peace and war, so that we can utilize these men to the best advantage.

On page 3, line 13, the words "provided further" should be underlined. No other changes on that page.

On page 4, line 6, the word "regular" should be underlined. Certain matter has been stricken out of old section 4. The effect of that is to eliminate the limit of nine months heretofore set upon the service of militia when called into the service of the United States, leaving no limit whatever except the existing commissions or enlistments of officers and men.

Section 5 on the same page, in lines 22 and 23, the words "either within or without the territory of the United States," is new.

Then in line 24, beginning with the word "provided" to the end of that section on page 5. There seems no doubt—there may be a doubt, but it would be a slight one—that under the present law the President has the power to order the militia wherever he wants it to go, in the event of war. Under a reasonable construction of the words in the Constitution "to execute the laws of the Union," it seems manifest that the President has power to send the militia wherever it is necessary to have them go to execute the laws of the Union, as a declaration of war is a law of the union. But to dissipate any question of doubt, to destroy any possibility of misunderstanding and make the status of these forces perfectly plain, it seems desirable to insert these words.

Mr. LOWDEN. If, however, that opinion which you refer to was not sound, in view of the fact that this is a limitation of the Constitution, would this clear up the doubt?

General DRAIN. I think it would dispose of it.

Mr. LOWDEN. Suppose it should be held that to execute the laws did not mean to go out the territory of the United States to execute a declaration of war; then would this clear it up?

General DRAIN. No act of course can correct the Constitution. It is purely a question of construction. I do not think this point would ever be raised, as a matter of fact, if we write it in the law. As the law now stands, we are to a certain extent taking a great many of our national guardsmen into the service under false pretenses. That we should not do. We often, under the present system, get men into the service who ought not to go out as part of the first line. There are, I suppose, in the United States as near as I can judge about 13,000,000 men between the ages of 18 and 45 years. It is safe to say that at least 3,000,000 of these men are without such family ties or business connections as would operate to make it impracticable for them to go to war. Yet the other 10,000,000 ought not to go unless it was a big war. If you write in the law and make it perfectly plain that these men shall go anywhere for foreign service, you take to this service, on the one hand, those men who ought to go anywhere, and on the other hand, you keep out of the service those men who do not want to go anywhere on the first call, and who should not go under those circumstances in justice to themselves and their responsibilities.

This amendment, gentlemen, I want to say to you provoked no adverse discussion at all. Everybody was for it, and this convention—and this was the most representative convention we could possibly get together—was unanimously for it.

The CHAIRMAN. Will you indicate as you go along such sections or parts of sections on which there was any disapproval?

General DRAIN. There were none that aroused any disapproval. Not one serious change was made in the amendments as prepared by the committee.

We have now covered the change beginning in line 24 and the word "Provided" and extending to the end of the eighth line on page 5. In lines 4 and 5 we are quoting the exact language of the Constitution of the United States, and the provision is there inserted in lines 6, 7, and 8 that "the organized militia shall be called into the service of the United States in advance of any volunteer force which it may be determined to raise." These national guardsmen think that they should be guaranteed the first right to go.

Mr. PARKER. You do not call upon the militia until you have exhausted the Regular Army?

General DRAIN. That is true.

Mr. PARKER. Would there be any likelihood of calling upon any of the volunteer bodies before the Army is exhausted?

General DRAIN. We considered that there might be such a likelihood, and we removed the likelihood of it by inserting this provision. Certainly these men who are trained and ready to go, ought to be taken before any other volunteers are taken.

Mr. WILEY. When the Dick bill was passed, Mr. Root was Secretary of War—a very able lawyer—and he gave it as his opinion that the militia forces could not be taken out of the territory of the United States even in case of war, and for that reason he recommended the passage of the act known as the "Reserve forces," and that bill was introduced and defeated—to have what was known as a reserve force organized under special act of Congress, as an aid to the militia forces and at the same time under a separate and distinct act which would give the President of the United States really the right to call upon these military reserves and send them anywhere.

The principle of this case is discussed very elaborately in the case of Mott *v.* Martin, or Martin *v.* Mott. The opinion was given by Judge Story in the days of Madison. Still I have no objection to this section at all.

General DRAIN. I was familiar with the opinion of Mr. Root when it was rendered. I was a member of the committee at that time which conferred with him. I appeared with that committee, and then subsequently before this committee of which you are a member, and there was to a certain extent, a context which led Mr. Root to hold that opinion. He was very anxious to get this volunteer force, which many were opposed to.

Mr. WILEY. For that reason we put in this limitation of nine months, and that the President has the right to call out the forces for the purpose of repelling an invasion or suppressing an insurrection, but the limit of nine months is unconstitutional.

General DRAIN. The dicision which you quote was made when there was no provision by statute for the employment of services of these men under the proposed circumstances.

Mr. WILEY. It does not affect the law even if it should be held unconstitutional. While perhaps the service would be rendered—and I think we might have men who might avail themselves of it. It could be raised by habeas corpus proceedings perhaps.

General DRAIN. It is particularly obnoxious to a national guardsman, and I speak now for the entire National Guard—it has been a part of my business to learn what their attitude is toward their service—it is particularly obnoxious to the national guardsman to think that another force might be preferred over his. He wants to be placed in the first line.

Mr. WILEY. He wants the preferential right.

General DRAIN. Yes, and he wants to put himself at the disposal of the Government. Generally speaking, the majority of the national guardsmen do not want to be placed in a position to be asked. They want to be ordered to go, and to stay as long as the President wants them to stay. They are in the National Guard for the purpose of learning to do a soldier's duty. Most of their fathers were soldiers, either on the side of the North or of the South, and that is one reason why they want to prepare themselves in peace for service in war. They know how important such preparation is.

Mr. KELIHER. If it were possible for a man to invoke the law against going away like that, and his contention should be sound, would it not be demoralizing for the force if that were possible?

Mr. PARKER. It would if he were successful.

Mr. DENBY. He would have to invoke the law before he was sworn into the United States service.

General DRAIN. No; we are providing here that he shall not have to take any new oath of enlistment. The United States steps into the shoes of the State. He takes the oath now to support the Constitution of the United States and the constitution of his own State. It is the same enlistment and the same oath.

Mr. WILEY. The President of the United States is the Commander in Chief of the militia forces anywhere within the United States certainly for the purpose of enforcing the laws or repelling an invasion or suppressing an insurrection.

Mr. PARKER. I will ask you the question, under the provisions of this proposed law, is not the militia in time of war mustered into the regular service as under the present law, the same as volunteers were during the civil war?

General DRAIN. Under the proposed law in section 7 we have covered the point you have now raised—and also in section 14. We say "shall be mustered into the service without further enlistment, and without further medical examination previous to such muster, except for those States and Territories which have not adopted the standard of medical examination prescribed for the Regular Army."

Mr. PARKER. In that case they are subject to the rules and regulations of war as is the Regular Army?

General DRAIN. Yes, sir. We seek to maintain the integrity and identity of the organization. The geographical esprit de corps is very valuable asset to an army. If a regiment comes from South Dakota, no matter where it goes, it is always, say, the "First South Dakota," and the men fight a little bit harder and they suffer a little bit longer because they belong to that "First South Dakota" Regiment and they desire to do it and their State the utmost credit. Then if the State has organized its reserve battalion for the regiment the men enlisted in it are recruited from the same locality from which the regiment came. They will be taught to believe that the regiment in which they are to serve is the best in the service, and that the proudest distinction which can come to them will be theirs when they join the regiment in the field.

I may say to you in passing that the thing which impressed me most in the convention of these national guardsmen to which I have referred was the beautiful, magnificent, patriotic way in which they stood together for these things. It made no difference where they

came from, they all wanted the same thing. They wanted to be put on the first line in a war. They did not want to be left at home. They are in the national guard for the purpose of fitting themselves to actually defend the country in time of war.

Now, on page 5, commencing with line 14, "shall be mustered for service without further enlistment, and without further medical examination previous to such muster, except for those States and Territories which have not adopted the standard of medical examination prescribed for the Regular Army: *Provided*,"—that is new matter.

Mr. LOWDEN. I think there is a big Constitutional question in there. I did not know of that opinion of Secretary Root——

Mr. WILEY. I did not mean to say that Secretary Root ever gave any written opinion. But I know that the question came up of establishing a national guard at the time of the outbreak of the Spanish-American war. They had organized as the First Alabama, Second Alabama, and Third Alabama regiments. They could not go because they had to be used outside of the territory of the United States. And to obviate that he suggested, at the time of the passage of the Dick bill, this national reserve force, because he said they could organize under a special act of Congress, not a part of the militia organization, strictly speaking, and then they could be ordered out anywhere, and in the proposed national reserves, they were to be recruited from men who had served in the various wars, and the age limit was somewhat higher than 45 years, I think. I know we staggered over that proposition. But I do not make that suggestion for the purpose of militating against this provision, because I think it ought to be put in.

Mr. LOWDEN. I think it ought to be put in if it is Constitutional. If it is not Constitutional, we ought to know it.

Mr. WILEY. It would not vitiate the whole law, notwithstanding a part of it might be unconstitutional.

The CHAIRMAN. Of course laws are only valid so far as they are enacted in pursuance of the Constitution.

Mr. PARKER. Only that portion of the law which conflicts with the Constitution.

Mr. WILEY. I think the limitation of nine months is clearly unconstitutional, because the President has the right to call them out and employ them within the limits of the United States.

Mr. KELIHER. You say that amendment recommended by Secretary Root was defeated?

Mr. WILEY. No, but in order to solve the doubt on that subject he suggested, and the bill was introduced, and the bill was reported favorably to my recollection in the Fifty-seventh Congress at the time the Dick bill passed, but it never was acted upon in the House.

Mr. LOWDEN. Do you remember the name of that bill?

Mr. WILEY. A "bill to create a national reserve."

General DRAIN. It is only fair to say that there were some lawyers, and perhaps not particularly great ones, on the committee, and they went into this Constitutional question pretty closely, and they were unanimously of the opinion—and you know that where you get three or four lawyers together it is sometimes hard to get them to agree on any subject—that such a provision as we have just read was not unconstitutional, that it was Constitutional, and if the

Constitution would allow such a thing to be done, then it ought to be written in the law, so that there could be no question about it.

Mr. LOWDEN. I think that the last part of your proposition is sound, and I am absolutely in favor of this provision.

General DRAIN. Of course you note that we had the opinion of General Davis, the Judge-Advocate General of the Army, on this matter.

Mr. LOWDEN. Yes, and he put in on the ground that a declaration of war was a law, and therefore it came within the provision to execute the laws, but there are a lot of mighty good lawyers who do not believe that, and it is a very much mooted question.

General DRAIN. But that is his position upon the matter.

Mr. WILEY. It would be well to have the authorities upon this proposition.

General DRAIN. There can be no direct authority upon this particular point, in view of the fact that there is no law and never has been any law of this kind before.

On page 6, line 1, "That the majority membership of courts-martial for the trial of officers or men of the militia when in the service of the United States shall be composed of militia officers." The present law provides for court-martial for the trial of officers and men, the court to be composed entirely of militia officers.

The CHAIRMAN. There is no Constitutional question involved in that.

General DRAIN. No. As a matter of fact, as the law exists to-day, officers of the militia may sit on courts to try officers of the Regular establishment. Such a court might be entirely composed of militia officers in time of war.

The CHAIRMAN. There is a decision within the last two years about the right of Regular Army officers to try the militia.

General DRAIN. That is true; we have a line of decisions upon that, which in effect provide that courts which try militia officers shall be entirely composed of militia officers, but that is because there is no provision of law to allow a mixed court.

This suggestion did not come from the officers of the Regular Army, but it came from the National Guard, for these reasons: an investigation of cases which had been tried by courts composed entirely of militia officers in the Philippine Islands led the committee to believe that those officers were more inclined to be hard and severe upon those brought before them than the mixed courts had been, and further than that, sometimes in the service it seemed impracticable to get enough officers of the militia to serve, and yet further that the officers of the militia could not be supposed to be as conversant with courts-martial proceedings as officers of the regular establishment. To take the minority membership of the court from the Regular Army would appear to best serve the ends of justice.

In section 11, page 6, in line 10, underline the words "called forth." The words "called forth" are substituted for the word "accepted" in the old law.

Mr. WILEY. "Called forth" is the constitutional language, too.

General DRAIN. Yes, sir. You do not want any acceptance. There is no question of acceptance involved.

On page 6, line 21, the words "from time to time to the organized militia, under such regulations as he may prescribe," is new; and

then drop down to the end of line 23, commencing with the words "together with all accessories," and then to the end of line 24 and all of line 25 and the second line on page 7, "arm uniform" and the words "equip" are new. Then in lines 3 and 4, the words "in accordance with the requirements of this act" are new.

In line 14 the word "Provided" should be underlined. On lines 15 and 16 the words "except as hereinafter provided" are new.

In line 19 the words "or equipments" are new. All of line 20 and line 21 to and including the word "war" is new.

In line 23 "all United States property so replaced or condemned" is new matter.

Lines 24 and 25, and on page 8 to the end of the fourteenth line should be underlined.

In line 18 the words "equipage" and "and military stores" should be underlined.

Those are the only changes in the section. The purpose of the section is this: To provide that the United States shall issue the necessary accouterments, equipment, clothing, military stores of all kinds required by the Army of the United States, so that the burden of equipping these troops shall rest upon the United States. It provides also that this equipping shall go on under the direction of the Secretary of War, and that when the Organized Militia is uniformed as herein required the Secretary of War is authorized to fix the annual clothing allowance to each State and Territory, to each enlisted man, and thereafter the clothing shall be issued in accordance with such allowance, and the governor shall be authorized to "drop from his returns each year as expended clothing corresponding in value to such allowance." That is to say, if clothing were required at the rate of one uniform for two years, if it took two years to wear out a uniform, this allowance would be made on the basis of the actual number of men. Then the governor, when he had expended that allowance, if he needed more clothing for these men than was covered by this allowance, would have to find it in some other way.

Mr. DENBY. General, does this provide exact uniformity? It apparently does, but I presume that means that the service badges of the different States may be retained.

General DRAIN. Yes, there is no question that——

Mr. DENBY. So that they can wear the United States marks?

General DRAIN. There is no question about that, that the States have their right——

Mr. DENBY. But the uniforms then would be in exact conformity with the United States service.

General DRAIN. Yes.

Mr. KELIHER. Do I understand that this provides and fixes the life of a uniform at two years?

General DRAIN. No, it does not fix it at all. That is left to the discretion of the Secretary of War. That is a practical question, that can not be solved in advance. Certain conditions of service might make it desirable to give more or different kinds of uniforms to different forces. For instance, in Alabama they would want more light clothing than they would in South Dakota, and in South Dakota they would require more heavy clothing than in Alabama. There are other things of the same kind which can only be adjusted by the Sec-

retary of War under the authority which we give him here for exercising his discretion.

The CHAIRMAN. Is there anything in this bill to prevent the men wearing these uniforms when they are not in the service?

General DRAIN. Nothing in this bill. Every State that I know of has laws to that effect. I do not know of any State where there is not such a provision. I do not know of any State where there is not a prohibition against wearing the uniform when not on duty.

Mr. WILEY. There is a provision in my State against the using the insignia of rank, if you do not belong to a military organization.

General DRAIN. There is nothing more on that page. On page 9, line 16, the first word "Provided" is underlined.

On line 21, page 9, commencing with the words "Provided further," underline everything to the bottom of the page.

At the top of page 10 underline line 1, and underline the word "States" on line 2.

Under the present law in our joint maneuver camps there is no authority of law for the exercise of command. There has been no trouble. It is perhaps the best possible recommendation for the spirit in which the officers of the Regular Army and the officers of the National Guard have approached this joint maneuver service; that we never have had one single question of authority raised. The officers of the militia have commanded brigades with colonels of the Regular Army under them, simply by courtesy, without any authority of law. We never have had the slightest difficulty about it. We can foresee that there might sometime arise such a difficulty, and we provide for that. Under the rules and articles of war referred to, it is provided, as you know, that where two officers of the same grade, that is, say two colonels, are present, one from the Regular Army and one from the National Guard, that the Regular Army colonel has seniority, no matter what the date of his commission. If, on the other hand, there was a colonel of the National Guard and a lieutenent-colonel of the Regular Army present, the colonel of the National Guard would command.

Mr. KELIHER. Does that apply to every officer?

General DRAIN. Yes; right down the line. Those are the present rules and regulations of war, and we simply apply them to the joint maneuver camps, and avoid the possibility of any such question ever arising.

Next, on page 10, line 12, at the end of the line "enlisted man," should be underlined.

In line 18, the words "or enlisted man," and in line 21 the words "or enlisted man" should be underlined.

In line 23 of the same page "such officer" should be underlined.

In line 25 the words "each enlisted man such subsistence as is furnished to an enlisted man of the Regular Army," which ends on page 11, should be underlined.

This section merely provides for attendance upon service schools by enlisted men as well as officers of the National Guard. In section 20, page 11, line 10, the words "or enlisted men" should be underlined.

Beginning in line 14 with the words "The Secretary of War," from there to the end of the bill upon the next page is new matter.

I should say with reference to the words added, "or enlisted men," in line 10 of section 20, that it merely adds to the authority of the

Secretary of War, so that he can detail enlisted men of Army as well as commissioned officers of the Army for service with the National Guard.

Mr. DENBY. Have you not heretofore drawn a distinction between the Regular Army and the militia by the use of the word "Regular?" You have omitted it here. These militia are also of the Army under this bill. I should think it would be clearer if it said of the "Regular Army."

The purport of that portion of section 20, commencing with the end of line 14, is to authorize the Secretary of War to appoint a board of five officers on the active list of the organized militia to act as an advisory board whenever the Secretary should call them to confer on matters of the general situation, etc.

The CHAIRMAN. What answer did you make to Mr. Denby in regard to the word "Army?"

General DRAIN. Why, there is no doubt in my mind that there can be only one construction placed upon that—that it would be the Regular Army.

Mr. DENBY. The reason I raised the question was, on line 9, page 9, you said, "No part of the sum appropriated for the Regular Army shall be used to pay any part of the expenses of the organized militia of any State," etc., and exactly the same argument would apply there, and simply for uniformity should not the word "Regular" be used?

General DRAIN. You notice that the verbiage employed in section 20 is that of the old act. We did not make corrections of that sort where the old said "Army" or "Regular," considering the construction fixed and the meaning plain. Now, Mr. Chairman, does this cover what you want or do you want something more?

The CHAIRMAN. If you have anything further we will be glad to hear you.

General DRAIN. Gentlemen, I approach the question of general discussion of this measure with some hesitation, realizing as I do that you are probably better advised as to the practicability of the proposed action and of all questions of national policy than I am. I can only say to you that these proposed amendments represent the unanimous sentiment of the National Guard Association of the United States. Those of us who have been closely connected with the Federal legislation affecting the militia in the past believe that we now are prepared to take, under operation of these proposed amendments, the one great step forward which we have so long desired to take. In the working out of this law there are certain results sure of accomplishment which might be referred to. If, for instance, the governor of a State knows and is positively assured that the force which he has under his command, the organized militia of his State, is to go to war just as it stands, the effect of that knowledge will be to make him much more careful in the choice of his officers. The power to choose officers, as you know, is lodged by the Constitution in the hands of the States exclusively. It will make him more anxious to do everything that may make his force more efficient, because he has under his control a military organization which will go out to war as it stands.

As the situation rests now, nobody is quite assured of what would take place when war came. In the event of a large war taking place

after these amendments had been written upon the statute books of the United States, there would be none of the hurry and bustle and wild rushing about which has always taken place at the beginning of our previous wars, certainly not in so far as the Army and National Guard are concerned. The effect of the fixing the status of this force and the assurance to the officers and men who serve in these organizations that they are to go out as they stand, with the first line, if war should happen, will attract to the National Guard a great many men who are not now attracted to it at all, men who now say, "Well, we will wait until war comes along and then we will go into a Regular regiment, or we will go into an organization which will be actually sent to war." Under the new law you will get all these men in time of peace. It will mean, I believe, in the end, a large increase in the numerical strength of the militia as well as an increase in its actual efficiency. The effect may be for a time in some localities to decrease the strength, but the ultimate effect will be to greatly increase the strength so that when a war comes along the Regular Army and the National Guard would be able to come out and take the field at least 250,000 strong. Behind this army the President will have time to organize his general volunteer army along such lines as you gentlemen may provide.

Mr. LOWDEN. Has your committee made an estimate of the extra annual charge on the Government?

General DRAIN. Yes, sir.

Mr. LOWDEN. I suppose you will see that we are a little shy here for the next fiscal year and we will have about a thousand people asking the question what this will cost.

General DRAIN. In the first place, the amount of additional expense involved is one impossible of exact determination at this time because no one can say just how complete the equipment is in any State. I can give you the best figures which are available at this time.

Mr. PARKER. Why would it not be well to call upon the Secretary of War for that information?

The CHAIRMAN. I think we will address a letter to the Secretary of War asking him to state the reason why this bill should be enacted into a law, so that we can embody it in our report upon the bill, also asking him to state the cost.

Mr. DENBY. What are your figures?

General DRAIN. From $750,000 to a $1,000,000 the first year increase, on account of the uniforms and equipment.

Mr. LOWDEN. How much after that year?

General DRAIN. Probably $1,000,000 a year; but, as I say, it is a matter very difficult of estimate.

The CHAIRMAN. There are a great many members who are not as familiar with these subjects as most members of this committee are, and if you can state in a brief and concise way what the defects of the present system are, and the reason why you advocate this measure, it would be very desirable.

General DRAIN. The existing law in relation to the militia limits the time for which that force can be called out in event of war to nine months. That is putting the country in a position of taking out a force to fight which might have to be discharged and sent home almost as soon as it got in front of the enemy, and when it would

be most needed, a thing which has occurred time after time in the history of this country.

The CHAIRMAN. That is not the only defect.

General DRAIN. No.

Mr. KELIHER. When the time of a man's enlistment in the State militia expires and he is in the field, what is done?

General DRAIN. He is discharged, just as the man in the Regular Army; he is discharged when his term of enlistment has expired. If he desires to reenlist, of course, he may do so.

Mr. KELIHER. An officer in the State organization, if a vacancy occurs, is that filled by the State?

General DRAIN. That is a question which is not specifically covered in this act. The Constitution of the United States reserves to States the right to appoint their officers in accordance with their ideas. They select their officers as they choose.

I have not finished the summary. Under the existing law there is no adequate provision by the United States for equipping an organized militia and many of the States are not in a position to appropriate from their own treasuries a sufficient sum to accomplish this equipment. It therefore seems desirable that provision should be made whereby these men should not only be available in time of war, but being available they should also be fully prepared physically for service. And that can only be done by the appropriation of sufficient money by the United States to do that.

The other changes sought to be accomplished by the proposed amendment are matters of small moment. Those which are fundamental are those which I have stated.

The CHAIRMAN. In your opinion, and in the opinion of your organization, would there be any advantage to the United States with respect to being able to maintain a smaller Regular Army in case the system proposed in this measure is enacted into a law? Would it enable them to be as well prepared for any emergency with a smaller army than they otherwise would? Would there be any argument of that kind to advance or could there be?

General DRAIN. That question was not passed upon by the convention. If you wish me to express my opinion, I can do so.

The CHAIRMAN. Please do so.

General DRAIN. It would seem reasonable to suppose that the operation of the proposed amendments would be in the direction of lessening the necessity for increasing the Army at any rate.

The CHAIRMAN. I think you mentioned that in your remarks, that it would make it unnecessary to maintain a large standing army.

General DRAIN. A "large standing army" it is true. It would certainly operate to lessen the chances of a larger standing army being required.

Mr. PARKER. Would this not follow, if you had a well organized militia it would not be necessary to maintain a very large Regular Army?

Mr. DENBY. You could not cut down the present Army.

Mr. PARKER. I understand under the provisions of this bill that as to States that have adopted the medical examination as prescribed by the Regular Army their militia will be received without further examination.

Mr. DENBY. But to adopt a paper system and to carry out that system is two different things. You may say you adopt the requirements of the regular service, but unless there is some method of insuring uniformity in the application of the rules of the service you are very apt to get a different result.

The CHAIRMAN. General Drain, can you answer that?

General DRAIN. I can answer that very quickly. The Regular Army physical examination spoken of here is absolutely uniform, and it is applied now in a majority of the States, and to encourage an absolute uniformity a premium is placed upon the application of such an examination in the proposed amendments by saying that where it is applied the force from that State shall be taken without reexamination. We have now under the present law one annual inspection by a regular officer of the United States to determine whether the law has been complied with.

The CHAIRMAN. Physical as well as——

General DRAIN. In the regular way, yes. Not a reexamination physically.

The committee adjourned at 12 'clock m.

General DRAIN. Let me put that in these words: The present Regular Army is very small. I do not think the operation of the proposed amendment would be in the direction of reducing the present Regular Army, but I do think it would lessen the chances of necessity for ever increasing very greatly the Regular Army.

Mr. DENBY. This provides for the taking over by the National Government for use abroad, or anywhere else, the militia regiments. Does it increase in any way the strength of these regiments in their personnel, their physical condition, to be taken into the regular service? At the time of the Spanish war there probably were not 20 per cent of the organized militia of the National Guard that could have been taken into any army, and especially any army for service in a climate such as that of Cuba. What method of inspection, if any, is to be adopted to insure that? I see it states that the medical requirements of the United States as to admission shall be adopted by the State militia, but what method of inspection can there be which will insure a certain uniformity throughout the States?

It is notorious that the militia of different States have differences as radical as the armies of various countries do one from the other as to physical character of their make-up; and principally New York, and a great many other States, have not a high-class militia, and some of the States have a militia that is of a very low degree as to personnel.

Mr. CHAIRMAN: As requested by your committee I will endeavor to set forth some of the reasons why, in my judgment, House bill 14783 should be enacted into law. There are two benefits sought for by the friends of this measure, neither of which is new nor of recent discovery, and some of which, I may say, many of us have been urging a great while.

The first proposition is a matter of administration and embodies all amendments to the measure, except those embodied in section 13. It is sought by this bill to enlarge the scope of administration

as to who may be detailed with the Organized Militia, who may attend various schools, the time of service when called forth, composition of courts-martial, beginning of pay when called forth, medical examination, right of command, and such definite determination of matters and questions arising from practical administration. These are matters of necessity and should be fixed by law; they add no additional expense, and, I assume, they can meet with no serious objection.

Section 13 provides for the procuring, issuing, and accounting of property. Its provisions are very concise and plain. The object we seek to obtain under this provision is the furnishing of that part of a soldier's outfit not fully or clearly now covered or specifically provided for by law. It was thought that the original draft of this law covered everything when it specifically provided for the issue "of arms and such other necessary accouterments and equipments as are required for the Army of the United States." But we soon learned, after the law passed, that this language did not mean quartermaster stores; that we could not get uniforms, ponchos, blankets, and other things under this department, and the provisions in the law, "necessary accouterments, equipments as are required for the Army of the United States," were held not to include such things.

Now, gentlemen, this makes it necessary for us to come to you again and ask for a more definite wording of this statute, so there can be no doubt as to the authority of the Secretary of War to do what was contemplated in the beginning and is and ever has been an urgent necessity.

The benefits to be derived from this law by the United States are many and most important. It will make it possible for the President to call forth an army of 200,000 men and put them in the field in forty-eight hours, all uniformed and equipped, ready for service without delay in securing arms, clothing, and other necessities. Owing to the small Regular Army maintained by this country, it must be apparent to everyone of the vast importance of this law and its possibilities.

I would emphasize that this law only seeks what was intended in the beginning and only goes far enough to supply that which we now lack in equipment and can not otherwise obtain at present, and makes it possible for us to do what your law requires of us. The fact that we have not fully conformed the Organized Militia in the various States to the requirements of the Regular Army is due to a lack of sufficient definiteness, leaving an apparent inconsistency between existing sections of the Federal statutes. The amendments to section 13 are intended to remedy all this and will, I believe, make it possible for us to make of the National Guard an army equal to any like number of men in the world. To accomplish this we are willing to give our time and contribute our means, as we are so often called upon to do, but do feel that we should have the assistance of Congress to the extent of the reasonable provisions of this bill.

Thanking you, Mr. Chairman, and the members of the committee for your courtesy, I await your further pleasure.

A. B. CRITCHFIELD,
Adjutant-General of Ohio.

STATE OF MICHIGAN,
ADJUTANT-GENERAL'S OFFICE,
Lansing, January 21, 1908.

Hon. EDWARD DENBY, M. C.,
Washington, D. C.

SIR: I desire to call your attention to the bill which will be introduced in Congress "To increase the efficiency of the Organized Militia, and other purposes," which has been prepared under the direction of the National Guard Association of the United States, and at its recent meeting in Boston this was referred to the executive committee of the association, of which Gen. James A. Drain is chairman, and he is authorized to prepare same for presentation to Congress and to take such measures as he may deem necessary for the proper presentation of same, and to work for its success, and as you are a member of the committee on military matters for the House, you are in a position to assist materially in the successful passage of this bill, which has the unqualified approval of all military authorities in every State of the Union. Our own State will be materially benefited thereby, and I am sure every member of the National Guard will look to you for your support. Knowing as I do your interest in military matters, I feel assured you will give it your hearty support. As soon as the bill is printed and properly numbered for identification, I expect to correspond with the several members of our delegation calling their attention to it and asking for their support.

I shall be pleased to hear from you regarding this matter at your early convenience, and beg to remain,

Sincerely yours,

WM. T. MCGURRIN,
The Adjutant-General.

GENERAL HEADQUARTERS, STATE OF NEW YORK,
ADJUTANT-GENERAL'S OFFICE,
Albany, January 21, 1908.

Hon. GEORGE H. LINDSAY,
House of Representatives, Washington, D. C.

SIR: I have the honor to request your support of a bill to be introduced further amending the act entitled "An act to promote the efficiency of the militia, and for other purposes," approved January 21, 1903, as unanmously adopted and indorsed by the National Guard Association of the United States at recent convention held in Boston, January 15–16, 1908.

I have further to inform you that this measure meets with the hearty approval and indorsement of the National Guard Association of this State and the legislative commission to investigate the condition of the National Guard.

The militia act, as so amended, will beyond doubt for the first time in the history of this country clearly and definitely define the relation of the Organized Militia and in accordance with previous measures organize, uniform, and equip the same for efficient service in time of need. Furthermore, the measure will to a great extent, while definitely fixing the responsibility and obligation on the part

of the Organized Militia, readjust the burden for the support of the same, and to this extent equalize the expense.

I ask your support of this measure when introduced in the House of Representatives and shall appreciate your assistance.

Respectfully,

NELSON H. HENRY,
Adjutant-General.

STATE OF CONNECTICUT, MILITARY DEPARTMENT,
THE ADJUTANT-GENERAL'S OFFICE,
Hartford, January 25, 1908.

Hon. NEHEMIAH D. SPERRY, M. C.,
Washington, D. C.

MY DEAR CONGRESSMAN: I received word from Washington this morning that the legislation which the National Guard of the United States need for their betterment, a bill for which was framed by the executive committee, after conference with the War Department, this bill receiving the unanimous support of the National Guard Association Convention, held in Boston a few days since, is embodied in Senate bill No. 4316 and House bill No. 14783. It is my earnest desire and wish that, if possible, you give this bill your full support. It is the bill that all progressive national guardsmen want passed.

Very respectfully,

GEORGE M. COLE,
The Adjutant-General.

ADJUTANT-GENERAL'S OFFICE,
STATE OF ILLINOIS,
Springfield, January 20, 1908.

Hon. CHARLES E. FULLER,
Member of Congress, Washington, D. C.

SIR: I have just returned from the meeting of the National Guard Association of the United States, held in Boston January 13, 14, and 15. Representatives of the various guards of the Union were present, Illinois having 16 delegates.

A bill in the interest of the Organized Militia was prepared and placed in the hands of Gen. James A. Drain, of Washington, to be presented to Congress. General Drain will appear before the House Committee on Militia Monday, January 27, and I shall greatly appreciate your kind offices in assisting to have this bill favorably reported out of the committee. The National Guard Association of Illinois has unanimously approved said bill.

Very respectfully,

THOS. W. SCOTT,
Adjutant-General.

HEADQUARTERS FIRST INFANTRY,
CONNECTICUT NATIONAL GUARD,
South Manchester, Conn., January 28, 1908.

Hon. EDWIN W. HIGGINS,
Washington, D. C.

MY DEAR SIR: I take the liberty of writing to you and earnestly soliciting your able support for a bill to be introduced in the House of Representatives known as House bill No. 14783.

At a recent national convention of the National Guard Association of the United States, held at Boston, Mass., January 13, 1908, this bill was unanimously adopted. The bill has the approval of the leading officers of the United States Army, including General Bell, Chief of Staff, General Wotherspoon, president of the War College at Washington, Judge-Advocate-General Davis, and many others. No bill in recent years, or perhaps never in the history of the National Guard, has had such an important bearing on, or was of such vital interest to, the National Guard of this nation. With our millions, and ever-increasing millions, of people and our standing to-day as a great world power, and with our small standing army scattered from Porto Rico to the Philippines, the wisdom, the advisability, yes, the absolute necessity, of favorable consideration of the present bill by your honorable body will be readily perceived.

It is proposed by this bill to make our organized National Guard the second great line of our national defense by arming and equipping the guard the same in every respect as the Regular Army, being efficiently drilled, disciplined, and subject to the call of the President at all times, so that when the time of necessity shall approach we shall have a well-trained, well-organized, and well-equipped military force, capable and ready to maintain and uphold the honor and the dignity of our common country.

Earnestly hoping that this bill may meet with your approval and able support and assuring you that by helping the measure along to a successful issue you will ever merit the undying gratitude of every national guardsman of this State, I have the honor to remain,

Very truly, yours,

JOHN HICKEY,
Colonel First Infantry,
Connecticut National Guard, Commanding.

HEARINGS

BEFORE THE COMMITTEE ON MILITIA U.S. HOUSE OF REPRESENTATIVES

ON

H. R. 14783

[Feb. 17, 1908]

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

[House Resolution No. 203, Sixtieth Congress, first session.]

Mr. Steenerson submitted the following resolution:

"*Resolved*, That the Committee on Militia may have such printing and binding done as may be necessary in the transaction of its business.

COMMITTEE ON MILITIA,
HOUSE OF REPRESENTATIVES,
Monday, February 17, 1908.

The committee met at 10.40 o'clock a. m., Hon. Edwin Denby presiding, to consider H. R. 7545 and H. R. 14783.

The CHAIRMAN. In the absence of the chairman I will, at his suggestion and request, act in his place.

We have before us General Davis, Judge-Advocate-General of the Army.

STATEMENT OF GENERAL GEORGE B. DAVIS, JUDGE-ADVOCATE-GENERAL U. S. ARMY.

The CHAIRMAN. Did you get a letter from Mr. Steenerson asking you to appear before us this morning?

General DAVIS. A message.

The CHAIRMAN. Without specification?

General DAVIS. Yes; asking if I could appear this morning at half-past 10.

The CHAIRMAN. We find in the bill for reorganizing the militia of the District of Columbia, section 54 d, on page 21 of the bill:

SEC. 54 d. That the military courts herein provided for shall have the same power to compel the attendance and testimony of witnesses and to punish for contempt as have the criminal courts of the District of Columbia.

The point that agitated most of the committee, I think, was whether or not that did not conflict or interfere with the civil authorities, whether we had a right, or whether it was judicious to give a military court the power to compel the attendance and testimony of witnesses in civil life.

General DAVIS. In this bill much of the language seems to have been cast along the line of covering the enactment of Congress in reference to procedure of courts-martial. Of course, that is quite another affair. Courts-martial in the United States Army are carried on under laws enacted by Congress in pursuance of certain clauses of the Constitution, which vest authority in congress to make those rules. Now, the militia forces, under ordinary circumstances, are State forces, and of course the provisions of the Federal Constitution and the laws of Congress have no application to them at all. It is at best but a case of analogy. I confess I have not made that branch of the subject the subject of careful study, that is, I have never gone over the laws of the States which connect their systems of courts-martial in the militia with the laws of the State, but of course there must be that connection. A person who belongs to the regular establishment, as a soldier in the operation of the enlistment contract, or as an officer in the operation of an appointment to office waives, for the time being, certain rights as a citizen and he subjects himself to the operation of courts-martial. But a member of the militia is always a citizen, and the relation which he bears to

the State in which he serves as a member of the militia is one that is altogether within the jurisdiction of the State. I have noticed that in each State there is some way of connecting the courts-martial agency with the judicial system of the State, and in no two States is it provided for in exactly the same way, so that it is not always safe to take a statute that applies to the military establishment and undertake to apply it to the organized militia.

Now in the Army—and I wrote a note to Mr. Steenerson about this—a section of the Revised Statutes authorizes the judge-advocate of a court-martial in the Army to issue the same process of attachment that may be issued in a court in the State in which the court sits with the view to compel the attendance of witnesses who have been duly summoned and have failed to appear. Not many cases have arisen under the provision, but there was an idea, on account of the rather general nature of the language, that the power that was conferred not only included the bringing of the body of the witness into court, but of compelling him to testify; but that was set aside in the Kilbourn case, in which it was attempted to imprison a witness who refused to answer. The case went to the Supreme Court, and that view was negatived by the decision of the court in the case of Hallett Kilbourn. Curiously enough, a corresponding section, not in quite the same language, applying to naval courts-martial, permits the naval court to compel a witness to answer but does not give it any authority to issue process of attachment to bring him into court if he fails to obey the summons.

The failure to have power to compel an answer in time of peace has given some trouble in a class of cases like this, where an offense has been committed and the witnesses who can testify to the facts have a decided sympathy with the prisoner. In such a case if they refused to answer nothing could be done. It became rather a sharp issue in the trial of the Carter case. That was an engineer officer who was charged with the embezzlement of considerable sums of public money, and in order to try the case it was necessary that the court-martial should have the same power as criminal courts in the States in respect to compelling witnesses to answer, thus compelling presidents of banks and trust companies to bring in their accounts with Captain Carter. But we did not have it, and we knew we did not have it. So the trial was defective to that extent, and it attracted the attention of Congress and an enactment was passed which conferred the proper authority, covered the gap in legislation, and covered it in precisely the same way in which it had been habitually covered by Congress in previous cases. Here and there you give to some agency of the executive power to carry on an investigation. You do it in the execution of the internal-revenue laws and in the execution of the customs laws. It is conceded to be necessary that a witness who is asked a question that is germane to the investigation should be compelled to answer, and the practice of Congress has always been, as these inquiries are conducted, to require the officer conducting the investigation to certify the question over to the Federal court, and it is put by the court and taken up as a question by the court, and the answer is compelled, or if the witness refuses he is in contempt—not of the officer, but he is in contempt of the circuit or district court of the United States, and there you have your case right where it belongs. This action was taken by Congress with a

view to apply to a case arising in a court-martial trial. If a witness who has been regularly summoned and has appeared, but refuses to answer a material question, it is made the duty of the judge-advocate to draw up the question under the direction of the court and transmit it to the proper United States district attorney of the district in which the court sits, and it is his duty to take it up, I think by information in the proper court, and that is the end of it, as far as the court-martial is concerned.

Now in the States I see that the method of joining these two jurisdictions is not quite the same, but there is a rough resemblance running through them, and if it is a matter of declining to answer a question it is certified over to the proper court, and if a judgment that has been reached I notice that additional safeguards are provided to protect the militia officer against the arbitrary action of the court-martial. The procedure is made to resemble that of a civil court, and I suppose the provisions are carefully drawn under the State constitutions so as to be unobjectionable on the ground of their constitutionality. The usual method, as far as I have been able to get at it, is that the judgment that is reached, after a full hearing, by the court-martial involving the imposition of a fine is certified to some civil court having proper jurisdiction, and there it is executed. It is taken up as the judgment of the court. For a similar reason some power to compel the attendance of witnesses is a very proper one. The original summons is hardly more than a ministerial act. A witness is duly summoned to appear before a lawful tribunal, and if he does not appear then the next step should be provided for by the issue of a compulsory process to procure his attendance. A similar adjustment should be attempted in connection with the organized militia of the District, and it would occur to me that the judge-advocate of the District National Guard, who is a very competent lawyer, could bridge over that difficulty for you very readily. I confess I am not very familiar with the practice of the civil courts here.

The CHAIRMAN. Our inquiry was more as to whether that was a power customarily conferred in the case of courts-martial among the militia, and whether it was held to be advisable to give such extensive power to a court. Have you any brief or digest of the laws of the States in that regard?

General DAVIS. I have the laws of the States in my office. I can get together a list if you desire. So far as I have been able to ascertain, however, such a power is exercised in a majority of the States.

The CHAIRMAN. I think it would be advisable if you could send us a memorandum later for the information of the committee. Your recollection is that such power is customarily given?

General DAVIS. Oh, yes. It has to be. The first case that came on would bring it up at once and it has to be provided for.

The CHAIRMAN. The point came up in our discussion in this way. We recognized the far greater severity of military punishments in many instances for offenses not in themselves evil, but simply contrary to discipline, and we thought that it seemed harsh that a military court in trying a man for some infraction of discipline, where no right was forfeited and no injury inflicted, yet you would have the power to call in the civil authority to summon and compel the testimony of witnesses, and thereafter to execute a military punishment, because the case of the militiaman is so radically different from that

of the regular, who is under constant military discipline and authority, and I myself did not know that the States had gone so far as to give that power. We spoke specifically of some slight failure of due respect to an officer at the weekly drill in the armory, which might mean a court-martial and thirty days in the guardhouse, or something of that kind, but to put a man in a civil jail for thirty days under those circumstances would be——

General DAVIS. That is a very different matter. That was discussed here in Congress, and it was recognized that if a court-martial was to have the power to try the case and investigate questions of fact, some way should be provided that answers to questions material to that inquiry should be compellable, and back in Mr. Cleveland's time I think it was proposed to vest some such authority in a court-martial, but there was always a very considerable sentiment against it, and I think properly. It was said that these cases might arise at a great distance from a Federal court, three or four hundred or a thousand miles, and to bring the parties that distance would involve a great expense. For that reason it was impossible to get any unanimity of view about it until Congress, in 1898, passed the present statute, which covers the case fully, and follows the Federal practice, putting the matter at once into the proper civil court.

The CHAIRMAN. That was not so important until of late years, since the effort now is to make the militia conform as closely as possible to the regular establishment in all particulars, I presume in punishments as well as otherwise, and we know how frequent military offenses are committed which are not otherwise offenses at all, and it would cause the disintegration of any militia if men were punished by imprisonment in a civil jail for certain military offenses. I do not know quite yet how the matter is to be met. It seems as if we can not afford not to give that power, yet I confess it seems a very dangerous power.

Mr. FLOYD. May I ask a question in connection with section 54d, which reads, "That the military courts herein provided for shall have the same power to compel the attendance and testimony of witnesses and to punish for contempt as the criminal courts of the District of Columbia." How would this military court enforce its punishment for contempt?

General DAVIS. I suppose it would be necessary to give it that authority. I suppose that the grant of power to punish might carry the man into the District jail. Wherever a witness before the civil courts could be imprisoned for contempt then he could be imprisoned upon the judgment of a court-martial.

Mr. FLOYD. Suppose the judgment of the court-martial is not to imprison him but to fine him, how could the military court impose the collection of the fine?

General DAVIS. There would be trouble at once. The statute does not go far enough to include all the agencies for executing the judgment of the court.

Mr. FLOYD. I think under this section as soon as you come to that point you would be in trouble as this section is drawn.

General DAVIS. Yes, sir.

Mr. FLOYD. It is not broad enough to cover that?

General DAVIS. It would involve an execution and the sale, perhaps, of property and things of that kind.

Mr. FLOYD. In one of the States they provide in this way, that if a judgment is rendered by a court-martial, they take that judgment to a justice of the peace and render judgment before the justice of the peace on the strength of the court-martial judgment and enforce it through the civil authorities in that way. In other words, they give this court-martial judgment the same effect as the judgment of one court in one State would have in another court in another State, and it seems to me to give this section 54d the force it should have the procedure ought to be extended further and go into detail and explain how it should be done.

General DAVIS. If you provide for the judgment being certified from the military to the civil court, there of course it might end, because its jurisdiction is complete in all those matters.

Mr. FLOYD. This is the statute of the State of Nebraska with reference to the collection of fines: "When fines assessed by courts-martial or company courts of discipline are not paid within ten days after the sentence is approved by the commander in chief and returned to the immediate commanding officer of the party so assessed, a list of such fines with the names of the delinquents shall be placed in the hands of any justice of the peace within the counties in which the delinquents, respectively, reside, and said justice shall thereupon issue process and render judgment upon the proof against such delinquents separately (the record of the military court to be considered as proof) together with the costs of suit, and shall issue execution thereon directed to any constable of the proper township who shall execute the same." Under this section as drawn I think that it is clear that a court-martial could send a man to jail, but I do not think it at all follows that a court-martial could render a judgment against him for a fine that could be collected at all.

General DAVIS. It raises the question at once, and, as you see, it is provided for there, and in the statutes that I have looked over it is provided for, but not always in just the same way.

Mr. FLOYD. While they are not identical they run along the same lines.

General DAVIS. Yes, sir.

The CHAIRMAN. We have been over the District bill, and we have made some few immaterial amendments.

General DAVIS. It seems to me on the whole a very carefully drawn measure, that fills the gaps that were left unfilled in the first bill of 1889, that was passed when General Ordway was the commanding officer of the District militia. A few cases have arisen that were not covered by his bill and which have been covered in this one. And then, of course, some extensive changes in organization have to be made, not only to make the District militia conform in organization to the Regular Army, but also to provide for the minimum strength that would have to be provided for in the statute, and Congress is to provide them here to meet the local conditions.

Mr. FLOYD. We have an amendment giving latitude on that.

The CHAIRMAN. We took away certain powers to discharge an enlisted man "without honor." You may have views upon that which you would like to express, General Davis.

General DAVIS. I have not. I do not know anything about it. General Drain would be more familiar with that than I am. There are certain cases in the militia of every State which make it necessary

to separate officers and enlisted men from the service. In each State they meet their problem in their own way, and just how they do it, of course, I have never followed up, but General Drain, I am sure, is quite familiar with it.

The CHAIRMAN. General Drain, the committee would be very glad to hear from you on that or any other point in connection with the bill.

General DRAIN. Mr. Chairman and gentlemen of the committee, I have given no consideration to the District bill. I am not familiar with its terms. I am really not in position to form an opinion on it, unless in answer to direct questions.

The CHAIRMAN. I do not think it is necessary to go into the amendments to the militia bill. I would like now, if it is proper, to switch this hearing from the District bill to No. 7545. We want very much to hear from General Drain on that bill.

General DRAIN. May I suggest that inasmuch as General Davis is here, and he is a very busy man, that he be asked before I am called upon as to whether he has anything to say in relation to the general militia bill?

The CHAIRMAN. I would like to ask General Davis one question in connection with this bill. Some time ago I called upon General Davis personally to ask his opinion on one point in this bill, and he was kind enough to give me a memorandum on the subject, which I turned over to Mr. Parker. I want that incorporated in these hearings this morning, but Mr. Parker is not here and the memorandum is not here. That was on the question of the constitutionality of authorizing the President to call into the service of the United States for employment anywhere and under any conditions, without restriction as to time, the militia forces of the States. You gave me a memorandum in general terms to the effect that the President was authorized under the Constitution to call out the militia to enforce the laws, that a declaration of war was held to be a law of the United States, and he might call them out in the execution of such a declaration. We would be very glad to hear from you further on that subject, General.

General DAVIS. The history of the various attempts that have been made to improve the efficiency of the militia since the Constitution was adopted through an effort to give it a larger employment, to make it a more secure reliance than it was at the date of the effort. It has generally been met in Congress by a report that things were well enough as they were, and that the militia clauses of the Constitution involved a compromise which better not be disturbed. That is the history of the opposition to every proposition which was made to improve the efficiency of the militia, and make it a more available force, or to advance its discipline or interests in any way.

In the Constitution there are three cases in which the militia may be called forth. It is provided that they may be called forth to execute the laws of the Union, to suppress insurrections, and to repel invasion. Other powers are vested in Congress by the Constitution, among them the power to raise and support armies, to provide and maintain a navy, and to make rules and regulations for the government of the land and naval forces, and to provide the method in which the militia forces may be called forth, assuming that the President is to call them forth in the manner prescribed in the legislation adopted

by Congress in furtherance of these clauses of the Constitution. Congress is also given power in the Constitution to do some things, to exercise certain other powers; one of them is to declare war. It is provided that Congress shall have power to declare war, to grant letters of marque and reprisal, and make rules concerning captures on land and water. There was very little discussion as to the propriety of vesting that power in Congress, because the Congress of the Confederation had all power, legislative and all other, that was susceptible of being exercised by a public body—there was not much discussion about that. Indeed, in the discussion that went on during the constitutional convention and subsequently, prior to its adoption, there was much more concern shown by the States in respect to a proposition which was new in the Constitution, that is, to authorize the militia of one State to be used in another. It seems as if all the interest that could be drummed up in behalf of the militia clauses was exhausted in discussing that question, but they did not go much further.

As a result, ever since the adoption of the Constitution the question has stood in this way: An offensive war must be commenced by a declaration of war. The power to declare war is granted to Congress in connection with a number of other powers, legislative in character, and involves in its exercise the enactment of legislation and the approval of the President, subject to his right to veto, and all that. There have been three offensive declarations of war in our history. All of them were in the form of statutes. All of them were approved by the President, and in each of them other matter was covered, beside the mere declaration that a state of war existed, or should be called into existence; but they were in form enactments of Congress under the Constitution, and it is difficult to see wherein they presented any differences from other constitutional legislation as to the matter to which they applied.

Congress is not anywhere compelled to maintain a standing army. It was known when the Constitution was adopted that war was likely to exist, that in our future experience it might be necessary to declare war against a foreign power, and that was provided for, but Congress was not under the slightest obligation to establish a standing army or to provide any other form of military force than a militia with a view to national defense. The Regular Army at that time consisted of 75 men. Fifty of them were stationed at West Point and 25 of them were stationed at Pittsburg. It was shortly increased to 700 men, but from that time on until 1802 every addition to the Regular Army was particularly described by Congress as temporary in character, showing that the policy of Congress had not at that time progressed to the point of recognizing the propriety of maintaining a permanent military establishment. The notion of volunteers was not known to the people who framed the Constitution. The idea of that force was something of which they had not yet been able to conceive. It began to show itself during the war of 1812, and after that they became familiarized with it, and in the Mexican war a considerable force of volunteers was provided for, and a very large one, as you all know, during the civil war.

But there was nothing in the Constitution which required Congress to maintain a standing army, and there was nothing in the Constitution itself, it seems to me, exempting the militia from the

obligation to perform that function in the State government which a military establishment performs. You take the particular grants that were given to Congress in the Constitution in that particular respect; the militia may be called forth or the constitutional military forces may be employed "to execute the laws of the Union, to suppress insurrections, and repel invasions." Now, the last two are absolutely necessary in any case. An insurrection or rebellion is not a public war upon its face, and the first duty that is charged upon the Government is the executive duty of executing the laws, and by giving them proper execution we suppress the insurrection. That was shown very clearly at the outbreak of the civil war. Congress was called together, I think, on the 15th of July, and it enacted no legislation the operation of which was calculated to suppress the rebellion until some time well along in August, when it made a punishment for some offenses connected with the insurrection. All it did was to supply the President with means to assist him in the execution of the laws—that is, in suppressing or overcoming the resistance to the execution of the laws. So it was necessary in the Constitution to make provision for the suppression of insurrections.

Mr. FLOYD. It never did make any affirmative declaration of war in the rebellion?

General DAVIS. No, indeed. It recognized a state of war to exist, and approved and adopted certain acts of the President which were in substance trespasses upon the legislative power. The President called forth a large force of volunteers before Congress met. He called forth the militia, and he added a small number of organizations to the Regular Army, and Congress, if I remember correctly, in the statute which furnished him means, cured the defects of the President's action, but it simply showed that the existence of insurrection charged the Executive with the first duty, and that the duty of Congress in respect to it was secondary.

Now, the question of repelling an invasion is another one that needed to be provided for in the Constitution. Then there is no declaration of war on the part of the invaded State. War simply exists. It is a question of national defense, and in the Constitution some provision had to be made allowing Congress to prepare and provide for some forces with the view to resisting invasion. Now, they must have known that, at some time or other, we would be engaged in, or might be engaged in, offensive war. They were very good international lawyers—the men who composed that convention—and they inserted in the Constitution the clauses and the words that were necessary to the recognition and existence of the law of nations. They knew perfectly well that it might be necessary in the protection of natural rights for the United States to declare war, and they gave constitutional authority to Congress and the Executive to raise military forces with which to carry on that war. The scope of their legislation was broad. They might have struck out all notion of a regular standing army and made their entire military force to consist of militia. They might, on the other hand, have restricted the part played by the militia in the national defense to a very minor and unimportant one. They could not have ignored the militia altogether, but they might have restricted the part that it played and minimized its importance. Or, as was the case, Congress might, under its constitutional authority, create two forces to supplement

each other, a smaller standing force and a larger militia force, and so the question reduces itself to this, the Constitution allows the constitutional establishment to be used—and the militia is a part of it—to be used to execute the laws of the Union; a declaration of war is an act of constitutional legislation, statutory in form. Of course there is the veto power, but it can be passed over the veto of the President, but none of them has ever been vetoed, and when so enacted it becomes an act of constitutional legislation; it becomes a law of the United States; it stands in need of execution.

As I have stated, the other two cases in which the forces may be used, the suppression of insurrection and repelling invasion, it was necessary for the Constitution to make special provision. Rebellion is internal war, that must be met as an internal municipal question, and it gave authority to call forth the militia to meet that emergency. The resistance to insurrection is internal and that had to be provided for, because Congress never declares a defensive war. The same may be said of an invasion of the territory of the United States. In such a case no declaration is necessary, the emergency simply has to be met by the President as the constituted Commander in Chief.

So it resolves itself to this, What is a formal declaration of war, regularly enacted by Congress? Is it an act of constitutional legislation? It seems to me difficult to escape the conclusion that all of the military forces that are provided for in the Constitution may be used to execute the laws of the United States. I am perfectly aware that from the beginning our policy in that regard has been tentative and hesitating, it has not always been clear to Congress just what it should be. Until the last twenty-five years the militia, going back to its origin, way back in the Colonial times, had been diminishing in efficiency, because the States and the United States had not made it the subject of serious legislative attention. It was not its own fault. It was because it had not been handled properly by the State and General Government in a legislative way. The men were there; the men were willing to serve. The forces were always forthcoming; they formed a part of the volunteer armies in the Mexican war; they came out and formed the volunteer armies on both sides in the Civil war, but the legislative machinery for disciplining them and getting them into a state of efficiency was always lacking. Efforts were made to improve it, but they always failed, and so it was that Congress failed somewhat in its duty in respect to the militia. It provided for a minimum regular establishment. It tried to sail in between the two, and that policy was kept up for a great many years, indeed until very recent times, when it seriously turned its attention to the development of the militia, and with the happiest results.

I think that this bill which is now before Congress is an exceedingly fortunate one. It brings all branches of the military establishment, the Regular Army and the militia together. Now they walk side by side. They are a part of the same force. They act and react upon each other. And it is a significant thing that the substantial result that is embodied in this bill has been reached from two directions. The thoughtful officers of the militia, who are doing a great deal of work, oftentimes at great pecuniary sacrifice, working hard to develop the militia, have come to the conclusion that the first detachment

of public armed force that is provided in a case of war should properly consist of 250,000 men; 100,000 of them should consist of the Regular Army and 150,000 of the militia as it stands.

The general staff working at the same time in going back in our experience, tracing the history of our military policy from the beginning, have reached precisely the same conclusion, that the first contingent of 250,000 men could only be composed, in reason and good sense, of the Regular Army and the organized militia. And so hopeful is the outlook now that it will be possible to say that if this bill becomes a law, in the very near future, the first brigade of the second division of the first army corps of that 250,000 will be composed of three regiments; one, we will say, from Tennessee, one from Georgia, and an infantry regiment of the Regular Army, which will have been in camps of instruction several times, and will have received instruction together in battle tactics. As a consequence the acquaintance of the officers of the three regiments will be such that they will all know each other thoroughly, the strong men will be known and the weak men will be known, and they will go out together as a brigade in the first contingent of the military forces that the United States sends forth.

The CHAIRMAN. If I am not breaking into your argument, it is possible very readily to conceive a state of war often arising without a declaration on either side, a war without having the sanction of any legislative enactment. Now you would not have there either the enforcement of a law of the United States or the suppression of a rebellion.

General DAVIS. What would it be? Would it be invasion of our territory?

The CHAIRMAN. No. If I recollect correctly, we did not formally declare war with Spain.

General DAVIS. Oh, yes.

The CHAIRMAN. We passed an act recognizing that a state of war existed?

General DAVIS. I think it is noted and accepted as a declaration of war.

The CHAIRMAN. It was not a declaration; it was a recognition that a state of war existed, followed by a resolution which authorized the President to terminate an unbearable condition, or something of that kind.

General DAVIS. In the execution of that legislation it was the President's duty to carry on military operations against Spain. The Constitution makes no provision as to the form of a declaration. But through the acts that passed and in the operation of them the President was authorized and required to give appropriate execution to them, to use the land and naval forces, and he did it.

The CHAIRMAN. Under this view he might then have called out the militia of the States without further legislation?

General DAVIS. Yes.

The CHAIRMAN. As you view it, in a national guard regiment, which reported for duty, every man being enlisted is under a military obligation to go?

General DAVIS. Yes. From the very beginning whenever the militia has been called forth the call has run for a short term of service.

Between 1800 and 1815 what was called a draft of militia was provided for; they remained at home until their services were needed, but the draft would be made and the forces would be set apart by the States, and they would be subject to the call of the President, and that draft was to remain in operation for a considerable time. But the notion seems to have taken root at a very early day that the militia was a short-term force and that it could not be employed outside of the territory of the United States. That must be recognized and dealt with because it is a popular interpretation that has been acquiesced in in practice certainly by two departments of the Government for a long time. If you will read the statute which recognizes the existence of the war with Mexico and provides for the troops that may be used to carry it on, the militia are mentioned at the head of the list, as if Congress thought there was an opportunity to see whether there was not some way in which the militia could be employed, and, if I remember it correctly, the militia was put at the head of the list of the forces that the President may employ to carry on the war with Mexico.

The CHAIRMAN. Then you hold that in this act we are merely formally, in a legislative way, recognizing a fact which has existed ever since the present organization of the National Guard has been in effect?

General DAVIS. Yes, sir.

The CHAIRMAN. That when a man enlists in the National Guard he also enlists in the United States Army?

General DAVIS. Yes, sir.

The CHAIRMAN. And that he might have been required at any time in the past, and will be required in the future, to serve out his term of enlistment in the United States Army without a new oath of enlistment?

General DAVIS. Yes, sir. That something like a springing use may arise in his enlistment in the militia. The oath that they take is one to obey the Constitution.

The CHAIRMAN. And he might have been called upon to obey it in arms under the Government oath?

General DAVIS. Yes, sir.

The CHAIRMAN. And this bill merely recognizes that interpretation?

General DAVIS. Yes, sir.

The CHAIRMAN. Which might have been lawfully placed upon our Constitution at any time?

General DAVIS. Yes, sir.

The CHAIRMAN. That is the way I would like to look at it, and I hope that it is absolutely sound.

General DAVIS. At this time, in the case of any such popular interpretation of course there would be opposition to it, and I have been surprised that there has been so little. But this offer comes from the organized militia itself. They say, we are the ones that are distinctly concerned and we make the offer, and if there is anything to waive we make the waiver. We are willing to do it.

The CHAIRMAN. Have you anything further that you want to say now?

General DAVIS. I would like to say a word about section 13 of the bill, which we have waived.

The CHAIRMAN. I will read the amendment.

WAR DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, February 5, 1908.

MY DEAR MR. DENBY: In conformity with my promise of this morning I beg to inclose a draft of section 8 of the militia bill, which modifies section 13 of the act of January 21, 1903 (32 Stat. L., 780). I have underscored the few changes that were necessary in order to give the section the proper finish as an act of constitutional legislation. To that end, in line 2 I have inserted after "procure" the words "by purchase or manufacture." About half way down the bill the governors of States are referred to, and I have inserted before the words "District of Columbia" the words "Commanding general of the militia of the."

The final section is underscored and is included in the last six lines of the inclosed draft, to which I have added a proviso, which usually accompanies permanent appropriations, to the effect that an itemized statement of such expenses shall accompany the annual report of the Secretary of War.

Very respectfully,

GEO. B. DAVIS,
Judge-Advocate-General.

Hon. EDWIN DENBY,
House of Representatives, Washington, D. C.

SEC. 8. That section thirteen of said act as amended be, and the same is hereby, amended and reenacted so as to read as follows:

"SEC. 13. That the Secretary of War is hereby authorized to procure, *by purchase or manufacture*, and to issue from time to time to the organized militia, under such regulations as he may prescribe, such number of the United States service arms, together with all accessories and such other accouterments, equipments, uniforms, clothing, equipage, and military stores of all kinds required for the Army of the United States as are necessary to arm, uniform, and equip all of the organized militia in the several States, Territories, and the District of Columbia, in accordance with the requirements of this act, without charging the cost or value thereof, or any expense connected therewith, against the allotment of said State, Territory, or the District of Columbia out of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes as amended, or requiring payment therefor, and to exchange, without receiving any money credit therefor, ammunition or parts thereof suitable to the new arms, round for round, for corresponding ammunition suitable to the old arms heretofore issued to said State, Territory, or the District of Columbia by the United States: *Provided*, That said property shall remain the property of the United States, except as hereinafter provided, and be annually accounted for by the governors of the States and Territories as required by law, and that each State, Territory, and the District of Columbia shall, on receipt of new arms or equipments, turn in to the War Department, or otherwise dispose of in accordance with the directions of the Secretary of War, without receiving any money credit therefor and without expense for transportation, all United States property so replaced or condemned. When the organized militia is uniformed as above required, the Secretary of War is authorized to fix an annual clothing allowance to each State, Territory, and the District of Columbia for each enlisted man of the organized militia thereof, and thereafter issues of clothing to such States, Territories, and the District of Columbia shall be in accordance with such allowance, and the governors of the States and Territories and *the commanding general of the militia of the district of Columbia*, shall be authorized to drop from their returns each year as expended clothing corresponding in value to such allowance. The Secretary of War is hereby further authorized to issue from time to time to the organized militia, under such regulations as he may prescribe, small arms and artillery ammunition upon the requisition of the governor, in the proportion of fifty per centum of the corresponding Regular Army allowance, without charge to the State's allotment from the appropriation under section sixteen hundred and sixty-one, Revised Statutes, as amended. To provide means to carry into effect the provisions of this section, the necessary money to cover the cost of procuring, exchanging, or issuing of arms, accouterments, equipments, uniforms, clothing, equipage, ammunition, and military stores to be exchanged or issued hereunder is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided, That the sum expended in the execution of the purchases and issues provided for in this section shall not exceed the sum of two million dollars ($2,000,000) in any fiscal year: Provided also, That the Secretary of War shall annually submit to Congress a report of expenditures made by him in the execution of the requirements of this section.*"

What is your idea of the sum to be expended under this section?

General DAVIS. In the operation of that section a permanent appropriation is established. And wherever such an appropriation is established, it is necessary in the first place to make sure that the language used operates as an act of appropriation, and to authorize the expenditure of the money. Wherever there is such a one—and we have several in the War Department—Congress always requires the head of the Executive Department to make an exact report of the expenditures each year, and that is the form of a proviso that is attached to all permanent appropriations.

The CHAIRMAN. Only this proviso should carry a sum certain.

General DAVIS. It does place a limitation, not above such a sum.

The CHAIRMAN. We are to insert that limitation. What limitation should that be, if you are sufficiently familiar with it?

General DAVIS. The committee will remember that in 1904, in the army appropriation bill, $2,000,000 was appropriated to complete the clothing and equipment of the National Guard throughout the United States. And it was a very necessary appropriation. The States vary very decidedly in their resources, and it came to the relief of a considerable number of States whose financial situation is such that they can not in one year or in a small number of years make the appropriations which are necessary to equip and clothe and arm their National Guard, and it went very far toward accomplishing that purpose—the $2,000,000 did. Since then the expenditures for clothing and equipment and all that sort of thing have been kept, and they vary between $750,000 and $825,000 a year, year after year. That is assuming—and it is quite proper to assume it—that the $2,000,000 was used in addition to what had been done before in clothing and equipping the militia. We have had opportunity for three years to know how much it cost each year to clothe them and keep up their equipment, and it has run between $750,000 and $825,000.

The CHAIRMAN. For maintenance?

General DAVIS. Yes; and for the complete equipment of the men, clothing, accouterments, tentage—all those things to put a regiment in the field in condition for active service.

The CHAIRMAN. You mean it costs now between $750,000 and $850,000 per annum?

General DAVIS. Yes; to keep the militia provided.

The CHAIRMAN. To replenish the stock, to repair the old, and so on?

General DAVIS. Yes, sir.

The CHAIRMAN. In other words, maintenance at the condition of perfect equipment to-day?

General DAVIS. Yes, sir.

General DRAIN. May I interpolate something at this point?

The CHAIRMAN. Certainly.

STATEMENT OF GEN. JAMES A. DRAIN, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE NATIONAL GUARD ASSOCIATION OF THE UNITED STATES.

General DRAIN. There is to be taken into consideration the fact that there has been only available for the purpose of assisting in the support of the militia under the provisions of section 1661 of the Revised Statutes the sum of $2,000,000. This being a limited sum, the States had to cut their garment according to the cloth. They have not drawn, in a majority of cases, all of the clothing and equipment necessary to fully equip their forces for the field. There is, for instance, in many of the States, tentage, six, eight and ten years old, which, when taken into the field, would not be much more serviceable than mosquito netting, because the water would go right through it. There are blue uniforms which have been worn by the men for five, six, and seven years. If we attempted to equip these forces from top to toe all in one year for immediate field service, the sum would go far beyond that which we have been expending for this purpose in the past three years.

It seems to me that we must take into consideration the condition of the equipment in the States. We are giving to these national guardsmen the privilege which they ask, to be put in the first line with the Regular Army for war, and then the United States, on its side, as a sort of compensation for that, is attempting by this proposed legislation to equip them for the field. It would be obviously inequitable and unfair to ask these men to go out or to order them out in the future unless they were properly equipped for field service. I realize that that can not all be done in one year, but I believe that the sum of $750,000 to $1,000,000 for clothing and equipment would be too little for one year. There is to be considered in addition under the provisions of this act the question of supplying ammunition, and in section 13 it is provided that 50 per cent of the allowance of ammunition to the Regular Army shall be issued to the National Guard. The cost of that issue of ammunition will be approximately $600,000 per year. In the course of my former hearing before this committee I was asked the question, "What will it cost to carry this act into effect?" I said, "That is a very difficult question to answer because we do not know what the condition of material is in the States." And basing my answer upon the very figures which General Davis has referred to, that is, the issues for the past three years, I estimated it roughly to cost, for "clothing and equipment," $750,000 to $1,000,000. I, however, stated nothing whatever about this ammunition. In fact, at the time I passed on to other matters without referring to it, and later it did not occur to me. It must be provided for in addition to any sums which are expected to be expended for clothing and equipment. Nothing is more important. Nothing is more necessary. It is true that no matter how well we equip these men to take the field, unless we have taught them to shoot they are not going to be of very much use, and we can not teach them to shoot without ammunition, therefore ammunition is vitally necessary. I had a talk with the Assistant Secretary of War Friday and again this morning upon this subject, and he said, when I called his attention to ammunition, that he had also referred only to clothing and equipment in his letter to the committee.

If I had felt at the time of the former hearing that there was to be a limitation placed in the act I surely would have gone more carefully into the question of an estimate, but I assumed that that would be left to the Secretary of War, as it was originally contemplated by this act.

I know that the feeling in the States is extremely favorable toward this measure, and there is just at this time that attitude toward the proposed legislation which is most satisfactory and altogether agreeable, that is, a spirit of give and take. Here we offer something to the United States, and here the United States is preparing to give us the sinews of war to help make that offer of practical value. The States themselves, as you all know, are appropriating at this time directly from their treasuries for the purpose of assisting to support the National Guard a sum which approximates more than $5,000,000. But there are other expenditures by the States and by individuals in the States besides these appropriations. So far as my present information goes it leads me to believe that the total expenditures in the States to assist in the support of the militia at this time do not fall far short of $8,000,000. There are many States in which money is appropriated by counties and municipalities for the construction of armories, and for the maintenance of armories. The city of New York is an example. There are $7,000,000 worth of armories in Greater New York alone, not maintained by State appropriations generally, but mostly by the city, under State legislation, with money taken from the treasury of the city. There are other examples that I think should be taken into consideration. This is very largely a mutual proposition. The United States is doing something on one hand and the States doing something on the other, with the common purpose of making the National Guard as nearly complete as possible in peace for war. Then under this act not only do we make it fit, or assist in making it fit, but we actually put it at the disposition of the United States to use when war comes along.

Mr. AMES. May I ask a question? There is a continuing appropriation of $2,000,000 now in support of the militia.

General DRAIN. Yes, sir.

Mr. AMES. Fifteen hundred thousand of which is used for equipment and armament, etc., and five hundred thousand for the maintaining of State camps.

General DRAIN. Let me answer that in this way: There is now under the provisions of section 1661 of the Revised Statutes as amended, an appropriation of $2,000,000 to assist in the support of the militia. Out of that the States may defray a portion of their expenses for their encampments. Out of that they may provide for pay, transportation, and subsistence of the men at Regular Army rates in State encampments; out of that they attempt to defray all of the expenses which are incurred outside of those which are covered by the money appropriated from their own treasuries. The appropriation is very inadequate to the use. In most of the States you will find officers going down into their own pockets to assist in maintaining their organizations. Officers when they go to camp, particularly in the Southern States, have often paid their own railway fare, and they do other things of that kind, which they should never be required to do. They certainly are doing enough when they

give their services without pay, without asking them to further contribute.

The CHAIRMAN. This bill does not touch that appropriation.

General DRAIN. It does not affect that appropriation in any way.

The CHAIRMAN. Then the proviso in section 13, in which it is stated, "that the sum expended in the execution of the purchases and issues provided for in this section shall not exceed the sum of ——— dollars," is intended to cover the additional appropriation which this bill may make necessary.

General DRAIN. Precisely, as I understand it.

The CHAIRMAN. Leaving that $2,000,000——

General DRAIN. Untouched.

The CHAIRMAN. And still to be appropriated annually.

General DRAIN. Yes, sir.

The CHAIRMAN. Then what sum is necessary to insert if this proviso is adopted in section 13?

General DRAIN. It would seem to me, if you propose to limit it, that not less than $2,000,000 should be stated as the maximum of expenditure in any one year for this purpose.

The CHAIRMAN. That, then, will be the increase provided for by this bill?

General DRAIN. Yes, sir. In other words, that would then make from all sources appropriated by the United States an appropriation of $4,000,000 available for the support of the militia, a sum considerably less than the actual appropriation from the treasuries of the States for the same purpose. Unquestionably this force, as provided for in this proposed bill, is of equal value to the United States and the States, and we should not ask the States to bear the larger portion of the burden in equity, although in providing the limit of $2,000,000 we are really asking the States to bear the larger part of the money expense. You see we can say, for the purposes of computation, we have something over 100,000 men in the militia to-day. Four million dollars is an appropriation of less than $40 per man per year. It costs us now something over a thousand dollars per man per year for our Regular Army, which is a necessary and proper expense. The $40 per year does not appear to be an excessive charge for an addition to the first line of this size. It seems a very economical way of securing that material.

Mr. AMES. By your figures the States are paying approximately $80 a year.

General DRAIN. I estimate the expenditures from all State sources at that sum.

Mr. AMES. That is not counting what the officers themselves expend in their own organizations.

General DRAIN. Including that?

General DAVIS. It does not even include all of the officers' uniforms or arms either.

General DRAIN. Some of the States have provision for a limited annual allowance to assist in the purchase of officers' uniforms. In no State is the allowance sufficient to even half defray the expenses of an officer for his uniform and equipment. Now, if the committee will remember just the bare items of personal equipment, of quartermaster's equipment, necessary to put a soldier in the field, will cost $38.25. Just these articles of quartermaster stores: One blanket,

one service olive drab uniform, one khaki uniform, one shirt, one pair shoes, one pair leggings, one overcoat, one hat, and one hat cord. That does not touch tentage, either shelter tents or large tents. It does not touch ponchos. It does not touch wagon transportation nor any of the other items.

The CHAIRMAN. Under the existing law the Government furnishes the items you have spoken of.

General DRAIN. It furnishes nothing except that which is charged to the allotment of the States under the appropriation.

The CHAIRMAN. The existing law mentions equipment, etc., but I understand when it is amplified as it is proposed to amplify it in this bill other items of equipment will be furnished to them.

General DRAIN. No, sir. Under the present law anything which is furnished to the Regular Army could be furnished to the National Guard, and charged against the allotment of the States, but the allotment is insufficient.

The CHAIRMAN. It has been two million.

General DRAIN. But it has not been possible to get all the equipment necessary from it, because it was far too small.

The CHAIRMAN. And this bill simply proposes to furnisn enough to enable them to get that equipment.

General DRAIN. We might say that is one purpose, Mr. Chairman, but the further purpose is this: It is not desirable, it does not seem good policy to go ahead and create a force which lacks the physical equipment necessary to put it into the field as a fighting force. We could spend a considerable amount of money on training these men, both in drilling and in discipline, and in shooting, but if we did not have the proper equipment for them it would be a very poor force when we turned them out. The uniform has a great deal to do with making a fighting man of a citizen. Even raw recruits when put into a uniform commence to stand up straighter and feel that they amount to a great deal more than they felt that they amounted to when they were in their ordinary clothes. Those of us who have had experience in training men know that the awkward squad will be much slower in drill ununiformed than if you can take the men of the awkward squad and put them even in an old uniform, so that they commence to feel something like soldiers, because they feel that they look like soldiers.

The CHAIRMAN. We want to get clearly before us just exactly the need of this new appropriation. I think your explanation seems to make it clear that the need of it is simply the insufficiency of the existing appropriation.

General DRAIN. Yes, that is true.

The CHAIRMAN. We have not enough now to arm, uniform, and equip the soldiers of the National Guard. We want to have enough, and it will take $2,000,000 additional to do it. Will that additional $2,000,000 enable the Government to send out to the periodical State encampments more troops and pay for their maintenance in camp than it does to-day.

General DAVIS. They would go into camp more frequently.

The CHAIRMAN. As it is to-day you have $500,000 to aid the States in sending the troops to the encampments. You will say to the State of Ohio, "We will pay for one regiment;" you will say to the State of Michigan, "We will pay for one regiment. If you send more than

one regiment you pay the cost of the additional regiments yourselves." Will this bill, if it passes with two million, leave any money which may be employed to pay for additional troops from the different States, or will you still have only the $500,000?

General DAVIS. The expenses which would be paid out of this appropriation under this bill have hitherto been paid out of the States' allotments under section 1661. To provide for pay here, you relieve that appropriation and enable more troops to be put into the camps.

The CHAIRMAN. Is it not a matter of fact that under the proposed law only $500,000 can be employed for putting troops in camp?

General DAVIS. The State that has money coming to it, providing that its organized militia are in a certain condition of efficiency, can use it all if it wants to. The limitations are in the State. It takes up the questions on its allotment: How much do we need for clothing? What is the least we can get on that? Those things must be provided for. So much is left. That we can expend for camp service and that sort of thing, and that is the limitation. I do not know that the War Department has put any limitation on it. Now an appropriation was made last year for general encampments. That is altogether paid out of the money credited in the Army appropriation bill. It does not cost the State anything for that, but for State camps of instruction proper, whether those are of the State troops alone or whether the regular troops are there with them, that is paid under section 1661.

General DRAIN. In other words, Mr. Chairman, the adjutant-general of the State in making up his plan for his year's work would take the total sum set over to the credit of his State by the United States out of the appropriation under section 1661, and add to that the sum which his State had appropriated, and out of that total sum make his segregations and subdivisions for these special purposes. As General Davis has said, under the provisions of section 1661 there is no limitation as to how the State shall expend this money. That is true. The money appropriated under section 1661 can be expended to pay for the supplies necessary, for a portion of the expense of encampments; that is, three items—subsistence, transportation, and pay at Regular Army rates for the purchase and maintenance of target ranges and for the carrying on of target practice. Those are the purposes for which the appropriation under section 1661 can be expended. Suppose a State sends its troops into camp under the provisions of section 1661, on the basis of the Regular Army pay. There is a difference between that rate of pay and the State rate of pay, which is in every case more than the Regular Army rate. It is the custom of the States to pay the troops out of their treasuries—a rather general custom, but not altogether general, to pay the difference between the State rate of pay and the Government rate of pay—and also to offer in some instances an additional allowance for subsistence.

I can not emphasize too strongly my belief, from an observation of the situation in the States generally, all over the country, that the lowest possible maximum to fix, provided one is fixed here in section 13, should be $2,000,000 and no money would be wasted should it be made $4,000,000. You could spend every cent of it advantageously and economically.

There is a provision here, as you will note, Mr. Chairman, that the Secretary of War is to adopt such regulations for the issuance of these stores as provided in section 13 as seem necessary to carry it out. In other words, it is practically in the hands of the Secretary of War as to how these stores shall be distributed, and he will unquestionably distribute them according to the condition of the equipment of each particular force. As has heretofore been stated before the committee, the States would not all require the same kind or quantity of equipment. Some would require more of one and some more of another.

I want to say another thing. It is only fair to say that in making this estimate of $2,000,000 as the maximum to be placed in section 13 that I have taken into consideration the fact that it is not desirable from a national standpoint to ask for all of that which might be necessary for this purpose at one time, because $2,000,000 will not be sufficient to wholly accomplish this purpose. I think that is true, General Davis.

General DAVIS. Yes, sir.

The CHAIRMAN. On page 22 of the hearing on January 27 I am quoted as saying, "And principally New York and a great many other States have not a high class militia." The word "not" should be stricken out, for I certainly meant to say that New York had a high class militia.

General DRAIN. That is true, Mr. Chairman, I remember distinctly that you did not say what the report appears to quote you as saying, but that you referred to certain organizations which were very effective, and among those you included the National Guard of New York.

Thereupon, at 12 o'clock m., the committee adjourned.

WAR DEPARTMENT,
Washington, February 5, 1908.

MY DEAR CONGRESSMAN: Referring to your call upon me this morning I take pleasure in handing you herewith a memorandum of the substance of our interview.

Very respectfully,

ROBERT SHAW OLIVER,
Assistant Secretary of War.

Hon. EDWIN DENBY,
House of Representatives.

WAR DEPARTMENT,
Washington, February 5, 1908.

After the Dick bill was passed in 1903, Congress appropriated $2,000,000 for the purpose of arming and equipping the militia, which at that time was very incomplete. This was a specific appropriation and was allotted to the various States in accordance with the strength of the militia in each case. At that time there was also a continuous appropriation of $1,000,000 under section 1661 of the Revised Statutes, which was used for the purpose of equipping the militia before the enactment of the Dick bill.

The provisions of that bill permitted, under certain conditions, the States to use this $1,000,000, annually appropriated (Rev. Stats., 1661), not only for arming and equipping the militia, but for the expenses of their State camps, so far as pay, subsistence, and transportation was concerned. The original $2,000,000, specially appropriated, was entirely expended for the purpose for which it was intended. In 1906 Congress increased the annual appropriation of $1,000,000 to $2,000,000 (Rev. Stats., 1661); one-fourth of this sum is set aside for the promotion of rifle practice and the balance is used for the equipment of troops and for the expense of their instruction, etc., in State camps.

In order to keep up the equipment of the guard in the various States, they have been in the habit of expending during the last five years an average of from $750,000 to $800,000 for this purpose. The remaining $750,000 is entirely inadequate in many ways to carry out the scheme of instruction outlined by the War Department for the National Guard in their State encampments, and therefore that sum has been supplemented by large appropriations from every State.

The Dick bill compels the States to place their National Guard in camps every summer, whether they want to or not. While the National Guard is primarily a State force and used entirely in time of peace as a State force and should consequently be maintained as a State force by the appropriations of the State, the Dick bill has added to the duties of the guard in this way—that it is subject in the time of war, insurrection, or invasion to the immediate call of the President and is under his orders exactly as the Regular Army; no volunteering is required. The National Guard is now considered by the Department as practically in the first line of defense of the United States, and the Department therefore feels that the Government of the United States should be willing to bear such expense as is entailed upon the States for the purpose of training the guard for the use of the United States over and above the duties of the States and that they should be assisted to a reasonable extent in this matter.

Under the Dick bill the President is authorized to establish the minimum strength for each organization of the National Guard. This minimum has been established, but it is not enforced except when the militia is called into the service of the United States, but it is absolutely necessary that this minimum force when it is called should come armed, uniformed, and equipped for the field and ready for work, and not left at that time to the United States to furnish the necessary arms, uniforms, and equipment for the additional number of troops required to bring the various organizations up to this minimum. In other words, the States are to gradually accumulate sufficient arms, uniforms, and equipments to equip the National Guard so that it may be ready when ordered out for duty and prevent the recurrence of the confusion that existed in 1898. All that is expected in this present bill is that the United States shall issue to the States a proper field equipment—uniforms and the necessary camp equipage and so on—to take the field in proper form, all of which is to be regulated by the Secretary of War.

The National Guard is practically armed, uniformed, and equipped at the present time, but every year some $800,000 is required to maintain that equipment by reason of wear and tear, recruits, etc.; and it is desired that the United States do this without charge against the allotments of the States under section 1661, Revised Statutes, which provides $2,000,000 annually, it being desired to use that amount exclusively for the education and development of the National Guard in the State camps, thereby relieving the State appropriations. These arms, uniforms, and equipments do not become the property of the States; they are merely loaned by the United States and are accounted for by the States. It is a simple business proposition whether it is not better to gradually equip these men we are going to use and keep them equipped rather than wait and equip them at the last moment when they are called out, and the $2,000,000 appropriation is not sufficient to do this and the other work besides. This seems to be fair. The States say in effect, "When we are called upon we will give you the men, all the men you want, if you will help us teach them, make soldiers of them as best you can, and give us the necessary field equipment; we do not ask anything else, and it is very little we are asking of the United States." Now, we spend for the United States Army $70,000,000 annually, we will say, and the extreme strength of the Regular Army would be 100,000. The National Guard has to-day a strength of 100,000 and can be expanded to about 150,000 and it would seem to be a matter of common sense to gradually equip that force at this small annual expense and have them all ready, so that when orders come they can be mobilized in forty-eight hours. As an example:

On the Pacific coast and in fact in all the seaboard States we are utilizing the National Guard in the coast defenses. All this is voluntary, the States taking part in this scheme of their own free will. We have in the coast defenses about one-third of the number of soldiers necessary to make one relief at the guns, hardly one-third, so we have been much embarrassed to know what to do. We have succeeded in interesting the militia in this plan, whereby every coast artillery company of the Regular Army shall have a twin company in the National Guard of the States contiguous to these seacoast defenses, thereby providing for at least one relief at the guns in case of war.

These coast-artillery exercises were introduced last summer, and the States responded splendidly. It is now going on very successfully, but in some of the States, particularly the Pacific Coast States, there are no companies of any consequence in the towns contiguous to the defenses. The National Guard of these States prefer

to attend the encampments of the mobile forces—infantry, cavalry, and artillery—to taking up this coast-artillery work. I received a letter this morning from Oregon; the authorities of that State are ready to organize three companies of coast artillery if the United States will equip them, as the State's allotment from the $2,000,000 is not large enough to meet this expense. The same is true of the State of California; if they can get a reasonable equipment from the United States, they will organize these twin companies to do United States work. It is proposed to interest a different class of men in this work, as it could be pointed out to the men that in the event of war they would be assigned to some particular fortification in the vicinity of their homes and not be called upon to leave their families for service at some distant point.

We are trying to educate the National Guard and to send in alternate years as many officers as we can to the State camps to help instruct them in a little higher order of military education. Then on the alternate years the Regular Army is gathered together at eight different points, in large bodies, for educational purposes and we invite the National Guard of the contiguous States to send at least a regiment. We are going to do it this year if we get the necessary appropriation. I hope that some day we can have enough to concentrate the whole of the National Guard in each of these places, and thereby form in embryo tentative army corps. The department commanders who command these eight different points shall become army corps commanders of the militia in the contiguous States; they will have no authority over them in time of peace but will be in supreme command at these encampments. Thus, in case of war, there is an embryo army corps of fairly well instructed men, which has only to be supplemented by the United States Volunteers, a separate body altogether.

The only difference in the new bill is that it permits the nine-months limit, which is a great drawback. The National Guard comes forward in a handsome way and says "we want to be in the first line." It is the first scheme for national defense I know of. It means the possibility of concentrating in forty-eight hours the nucleus of twelve army corps, reasonably drilled and reasonably organized, and also of a physical fitness approximating that of the Federal service. There will be a constant improvement. We are going to create a national guard division, which shall have these matters entirely in charge, so that this will be carried along to a complete finish. I want to get it started. We have started it already by having these seacoast defense exercises and by the joint encampments in 1906, and all we need is more money so we can have the whole thing together.

During the last four or five years the several States and Territories have used annually about $800,000, on an average, and it is reasonable to say that $800,000 is about what they will continue to spend. I have no other basis to work on. It ought to cost $1,000,000 for the first year, because there will be some new organizations, such as seacoast organizations, which ought to be equipped. It will all be under the Secretary of War, so there will be no foolish expenditures and he will also see that these equipments shall be the same as those in use by the Regular Army, dress, uniforms, and everything of that nature.

WAR DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, February 4, 1908.

MY DEAR MR. DENBY: In conformity to the message which you left at the Department yesterday, I beg leave to submit a very brief memorandum in the matter of employing the organized militia outside the territory of the United States.

The memorandum is extremely brief and imperfect, but I think includes the main points that it is necessary to consider in reaching a conclusion as to the constitutionality of the proposition.

It is very gratifying to note that this proposition originates not in the War Department or the Regular Army but among the officers of the organized militia whose commands will be subject to the operation of the statute in the event of its adoption by Congress.

And I remain, as always, faithfully, yours,

GEO. B. DAVIS.

Hon. EDWIN DENBY,
House of Representatives.

[Memorandum by the Judge-Advocate-General.]

EMPLOYMENT OF THE ORGANIZED MILITIA IN THE EXECUTION OF A DECLARATION OF WAR.

Among the several war powers vested in Congress by the Constitution are the following:

"To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years." (Constitution, Art. I, sec. 8, par. 11.)

"To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions." (Ibid., par. 14.)

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." (Ibid., par. 15.)

The following war powers are vested in the President:

"The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States." (Constitution, Art. II, sec. 2, par. 1.)

It will thus be seen that very broad powers, in respect to the national defense, are vested in Congress by the Constitution. In the execution of those powers:

(1) It may create a standing army, as a main reliance, relegating the militia to a subordinate position.

(2) It may make the militia a chief reliance and entirely dispense with the standing army.

As a matter of fact, Congress has acted under all the grants of war power which are vested in it by the Constitution. It has fostered and developed the militia and has employed it in occasions of national emergency; it has organized standing armies; it has raised volunteer armies for a limited term, and has resorted to conscription as a means of obtaining a military force with a view to meet a national emergency.

In framing the Constitution it was necessary to prescribe three heads under which the several war powers of Congress should be arranged, this to meet the following cases of emergency:

1. Offensive war, involving an invasion of foreign territory.

2. Defensive war, due to the invasion of the territory of the United States by a public enemy.

3. Insurrection or rebellion against the authority of the United States or against that of a State. (Under this head falls the case where there is forcible opposition to the execution of the laws of the United States.)

Each of these cases had to be provided for, and was in fact made the subject of a specific grant of power to Congress in the Constitution.

In the case of offensive war, hostilities would begin, and could only begin, with a formal declaration of war, originating in that branch of the Government having authority under the Constitution to act in the case.

In the case of defensive war, as no declaration has ever been regarded, at international law, as necessary by the State acting on the defensive, it was necessary to vest a power in Congress and the Executive to provide and employ troops with a view to resist such invasion.

In the case of insurrection, rebellion, or forcible resistance to the execution of the laws, it was necessary to vest authority in some branch of the Government to suppress such insurrection or rebellion or to overcome such resistance.

There have been three declarations of war in our Constitutional history, in each of which offensive operations are expressly contemplated, and each took the form of an act of Congress, which received Executive approval in the usual manner. Each contained other matter than the mere declaration of war and vested certain duties in the Executive. The following are the declarations:

Declaration of war against the Barbary powers. (Act of Feb. 6, 1802, 2 Stat. L., 129.)

Declaration of war against Great Britain. (Act of June 18, 1812; act of June 18, 1812, 2 Stat. L., 755.)

Declaration of war against Spain. (Act of Apr. 25, 1898, 30 Stat. L., 364.)

The Mexican war began without declaration, and its existence was recognized by Congress in an appropriate act of legislation. (Act of May 13, 1846, 9 Stat. L., 9.) Similar legislative recognition of an existing state of public war was given at the outbreak of the civil war.

It has been seen that each of the enactments above referred to constituted a constitutional act of legislation, which it was in the power of Congress to adopt and which it was the duty of the Executive to carry into effect. It is interesting to note that

the act of May 13, 1846, recognizing the existence of war with Mexico, expressly authorized the Executive to use the militia, among other forces, for its prosecution, and Congress by an appropriate enactment, which had some of the aspects of retrospective legislation, required the militia forces called forth in its operation to serve for six months, instead of three, as required by then-existing law.

It is conceded that what may be called the popular view of the operation of the Constitution is contrary to that herein explained—that is, that the militia may not be employed in offensive operations; i. e., in the invasion of foreign territory. This view has influenced the action of the Government upon several occasions; but I think it will be apparent, if the cases be carefully studied, that in the early history of the Republic such action was due to the fact that the militia was not a sufficiently disciplined force to be employed successfully in the operations of offensive warfare. For this reason, and to give the Federal Government complete control over the forces raised by its authority, the expedient of volunteer forces has been resorted to upon several occasions of national emergency, especially during the wars with Mexico and Spain and the civil war.

It is submitted, however, that a declaration of war is an act of constitutional legislation, requiring the performance of corresponding executive duties on the part of the President. It differs in no respect from other legislation acts, and equally charges the President with the duty of execution.

In this connection attention is invited to the correspondence in connection with the Seminole war in 1818. The operations undertaken involved an invasion of the Spanish territory of Florida. For this purpose the militia was called forth and employed. Whether the militia forces, which were slow in assembling, were actually used in carrying out the invasion of Spanish territory is not fully apparent from the correspondence. (American State Papers, vol. XII, "Military affairs," pp. 681 to 769.) See also a letter from Secretary of War Monroe to Congress under date of February 11, 1815. (Ibid., 605.)

Very respectfully,

GEO. B. DAVIS

FEBRUARY 4, 1908.

LB Ap '10